RECORD
& AND
BRIEF

Supreme Court, U.S.
FILED
AUG 26 2016
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No. 15-1204

In the Supreme Court of the United States

DAVID JENNINGS, ET AL., PETITIONERS

v.

ALEJANDRO RODRIGUEZ, ET AL.,
INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: MAR. 25, 2016
CERTIORARI GRANTED: JUNE 20, 2016

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 08-56156

ALEJANDRO RODRIGUEZ, PETITIONER-APPELLANT

v.

JAMES HAYES, ET AL., RESPONDENTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/17/08	1	Filed order (EDWARD LEAVY and SANDRA S. IKUTA) (Filed on 7-17-2008 in case no. 08-80055). The court , in its discretion, grants the petition for permission to appeal the district court's March 19, 2008 order denying class action certification. See Fed. R. Civ. P. 23(f). * * *
		* * * * *
8/20/09	23	FILED OPINION (BETTY BINNS FLETCHER, RAYMOND C. FISHER and RONALD M. GOULD) REVERSED AND REMANDED. Judge: BBF Authoring, Judge: RCF , Judge: RMG . FILED AND ENTERED JUDGMENT. [7034175] (PH) [Entered: 08/20/2009 08:51 AM]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
1/4/10	29	Filed order and amended opinion (BETTY BINNS FLETCHER, RAYMOND C. FISHER and RONALD M. GOULD). The opinion filed on August 20, 2009 and published at 578 F.3d 1032 (9th Cir. 2009) is hereby amended. The amended opinion is filed simultaneously with this order. With the amendment, the panel has voted to deny the petition for panel rehearing. Judges Fisher and Gould have voted to deny the petition for rehearing en banc and Judge B. Fletcher so recommends. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. Accordingly, the petition for panel rehearing and the petition for rehearing en banc are denied. * * *
		* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 12-56734

ALEJANDRO RODRIGUEZ, ET AL.,
PETITIONERS-APPELLEES

v.

TIMOTHY ROBBINS, ET AL., RESPONDENTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
9/21/12	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. * * *
9/21/12	2	Filed (ECF) Appellants Russell Davis, Arthur Edwards, Eric H. Holder, Jr., Sandra Hutchens, Mike Kreuger, Wesley Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Juan P. Osuna, Rodney Penner and Timothy Robbins EMERGENCY Motion to stay lower court action. Date of service: 09/21/2012. [8333645] (Atkinson, Theodore) [Entered: 09/21/2012 04:56 PM]
		* * * * *
9/25/12	4	Filed order (BETTY BINNS FLETCHER, RAYMOND C. FISHER

DATE	DOCKET NUMBER	PROCEEDINGS
		and RONALD M. GOULD) Respondents' emergency motion is denied. The panel will stay the district court's injunction until October 13, 2012. Respondents now have until November 12, 2012 to comply with the district court's injunction. [8336078] (TSP) [Entered: 09/25/2012 09:45 AM]
		* * * * *
4/16/13	48	FILED OPINION (KIM MCLANE WARDLAW, RONALD M. GOULD and SAM E. HADDON) AFFIRMED. Judge: KMW Authoring,. FILED AND ENTERED JUDGMENT. [8591143] (DD) [Entered: 04/16/2013 09:43 AM]
		* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 13-56706

ALEJANDRO RODRIGUEZ, ET AL.,
PETITIONERS-APPELLEES

v.

TIMOTHY ROBBINS, ET AL., RESPONDENTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
10/1/13	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. * * *
		* * * * *
10/9/13	3	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL ON CROSS-APPEAL. * * *
		* * * * *
10/28/15	133	Filed order (KIM MCLANE WARDLAW, RONALD M. GOULD and SAM E. HADDON) This order resolves several pending motions to strike, to take judicial notice, and to unseal documents. See Dkt. Nos. 23, 24, 56, 68, 69, 112. We consider

DATE	DOCKET NUMBER	PROCEEDINGS
		each motion in turn. (SEE ORDER FOR FULL TEXT) * * *
10/28/15	134	FILED OPINION (KIM MCLANE WARDLAW, RONALD M. GOULD and SAM E. HADDON) AFFIRMED IN PART, REVERSED IN PART AND REMANDED. Judge: KMW Authoring. FILED AND ENTERED JUDGMENT. [9735646] [13-56706, 13-56755] (RMM) [Entered: 10/28/2015 10:12 AM]
		* * * * *
6/21/16	144	Received notice from the Supreme Court. Petition for certiorari GRANTED on 06/20/2016. Supreme Court Number 15-1204. [10022573] [13-56706, 13-56755] (RR) [Entered: 06/21/2016 09:56 AM]
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DISTRICT - LOS ANGELES

Docket No. 2:07-cv-03239-TJH-RNB

ALEJANDRO RODRIGUEZ, ET AL.,
PETITIONERS-APPELLEES

v.

TIMOTHY ROBBINS, ET AL., RESPONDENTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
5/16/07	1	PETITION for Writ of Habeas Corpus by a Person In Federal Custody (28:2241) * * *
		* * * * *
06/25/07	7	ANSWER to Amended Petition for Writ of Habeas Corpus
		* * * * *
3/19/08	33	ORDER by Judge Terry J. Hatter Jr, that the Respondents' motion to dismiss 26 , the motion for class certification 10 and the ex parte application for a stay 30 be, and hereby are, Denied. (lom) (Entered: 03/21/2008)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
7/17/08	36	ORDER from 9th CCA filed, CCA # 08-80055. The court, in its discretion, grants the petition for permission to appeal the district court's 3/19/08 order denying class action certification. * * *
		* * * * *
8/20/09	47	ORDER from 9th CCA filed, CCA # 08-56156. We deny Petitioner Alejandro Rodriguez's Request for Judicial Notice as moot. DENIED. Order received in this district on 11/02/09. (lr) (Entered: 11/05/2009)
		* * * * *
10/15/10	101	NOTICE OF MOTION AND MOTION to Certify Class and Subclass filed by Plaintiffs Yussuf Abdikadir, Angel Armando Amaya, Jose Farias Cornejo, Abdirizak Aden Farah, Alejandro Rodriguez, Abel Perez Ruelas. * * *
		* * * * *
10/22/10	111	THIRD AMENDED COMPLAINT * * *
		* * * * *
11/15/10	122	NOTICE OF NON-OPPOSITION to MOTION to Certify Class and Subclass 101 filed by Respondents

DATE	DOCKET NUMBER	PROCEEDINGS
		Lee Baca, Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Sammy Jones, Mike Kreuger, Wesley Lee, George Molinar, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Timothy Robbins, Thomas G Snow, Paul Walters. (Reuveni, Erez) (Entered: 11/15/2010)
		* * * * *
11/15/10	161	ORDER by Judge Terry J. Hatter, Jr: granting 101 Plaintiff's Motion for class certification. (see attached document for details.) (lom) (Entered: 03/09/2011)
		* * * * *
6/25/12	232	NOTICE OF MOTION AND MOTION for Preliminary Injunction.. * * *
		* * * * *
7/18/12	250	OPPOSITION to MOTION for Preliminary Injunction. * * *
		* * * * *
8/3/12	252	REPLY IN SUPPORT OF MOTION for Preliminary Injunction.. * * *
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
9/13/12	255	ORDER AND PRELIMINARY INJUNCTION by Judge Terry J. Hatter, Jr.: It is Ordered that Petitioners' Motion for Preliminary Injunction 232 is Granted. It is further Ordered that Respondents and their agents, employees, assigns, and all those acting in concert with them, are preliminarily enjoined as follows: Within thirty days of the date of this order, Respondents shall identify all members of the Section 1225(b) and Section 1226(c) Subclasses and provide each of them with a bond hearing before an Immigration Judge with power to grant their release. See document for details. (gk) (Entered: 09/13/2012)
		* * * * *
9/18/12	257	ORDER by Judge Terry J. Hatter, Jr. The Court has considered Respondents' 256 ex parte application for an emergency stay of the preliminary injunction pending appeal, together with the moving papers. IT IS ORDERED that the ex parte application be, and hereby is, DENIED. (ys) (Entered: 09/18/2012)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
9/21/12	259	NOTICE OF APPEAL to the 9th CCA filed by Respondents Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Mike Kreuger, Wesley Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Timothy Robbins, Thomas G Snow. Appeal of Order on Motion for Preliminary Injunction, 255* * * * * * * *
2/8/13	281	NOTICE OF MOTION AND MOTION for Summary Judgment filed by Petitioners Yussuf Abdikadir, Angel Armando Ayala, Jose Farias Cornejo, Abdirizak Aden Farah, Alejandro Rodriguez, Abel Perez Ruelas. * * * * * * * *
3/15/13	299	NOTICE OF MOTION AND MOTION for Summary Judgment as to as to all Claims filed by Respondents Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Mike Kreuger, Wesley Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Timothy Robbins, Thomas G Snow. * * * * * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/26/13	330	REPLY in Support MOTION for Summary Judgment as to as to all Claims 299 filed by Respondents Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Mike Kreuger, Wesley Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Timothy Robbins, Thomas G Snow. * * *
		* * * * *
5/3/13	334	SUPPLEMENT to MOTION for Summary Judgment 281 filed by Petitioners Yussuf Abdikadir, Angel Armando Ayala, Jose Farias Cornejo, Abdirizak Aden Farah, Efren Orozco, Alejandro Rodriguez, Abel Perez Ruelas. * * *
		* * * * *
5/6/13	336	NOTICE OF MOTION AND MOTION for Order for Clarification of the Class Definition filed by Petitioners Yussuf Abdikadir, Angel Armando Ayala, Jose Farias Cornejo, Abdirizak Aden Farah, Efren Orozco, Alejandro Rodriguez, Abel Perez Ruelas. * * *
		* * * * *
5/13/13	340	MEMORANDUM in Opposition to MOTION for Order for Clarification

DATE	DOCKET NUMBER	PROCEEDINGS
		of the Class Definition 336 filed by Respondents Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Mike Kreuger, Wesley Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Timothy Robbins, Thomas G Snow. * * *
5/20/13	341	REPLY in Support of MOTION for Order for Clarification of the Class Definition 336 filed by Petitioners Yussuf Abdikadir, Angel Armando Ayala, Jose Farias Cornejo, Abdirizak Aden Farah, Efren Orozco, Alejandro Rodriguez, Abel Perez Ruelas.* * *
		* * * * *
7/23/13	350	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 259, CCA # 12-56734. The Judgment of the district court is Affirmed. Mandate received in this district on 7/23/13. (car) (Entered: 07/24/2013)
		* * * * *
8/6/13	353	ORDER, JUDGMENT AND PERMANENT INJUNCTION by Judge Terry J. Hatter, Jr.: The Court has considered Petitioners' motion to clarify the class definition 336. The Court certified the class in

DATE	DOCKET NUMBER	PROCEEDINGS
		this case after the Ninth Circuit held that the class must be certified. Rodriguez v. Hayes (Rodriguez I), 591 F.3d 1105 (9th Cir. 2010). It is further Ordered that Petitioners' motion for summary judgment 281 be, and hereby is, Granted. It is further Ordered that Respondents' motion for summary judgment 299 be, and hereby is, Denied. It is further Ordered, Adjudged and Decreed that Judgment be, and hereby is, Entered in favor of Petitioners and against Respondents. It is further Ordered that Respondents and their agents, employees, assigns, and all those acting in concert with them be, and hereby are, Permanently Enjoined, etc. See document for details re class definition and bond hearings. (gk) (Entered: 08/07/2013)
		* * * * *
9/30/13	360	NOTICE OF APPEAL to the 9th CCA filed by Respondents Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Mike Kreuger, Wesley Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Timothy Robbins, Thomas G Snow. Appeal of Order on Motion for Summary Judgment,,

DATE	DOCKET NUMBER	PROCEEDINGS
		Order on Motion for Order,,,,,,,,, 353 (Appeal fee FEE WAIVED.) (Atkinson, Theodore) (Entered: 09/30/2013)
		* * * * *
10/7/13	365	NOTICE OF APPEAL to the 9th CCA filed by Petitioners Yussuf Abdikadir, Angel Armando Ayala, Jose Farias Cornejo, Abdirizak Aden Farah, Efren Orozco, Alejandro Rodriguez, Abel Perez Ruelas. Appeal of Order on Motion for Summary Judgment * * *
		* * * * *
10/11/13	367	NOTICE OF MOTION AND MOTION for Order for Compliance with August 6, 2013 Order, Dkt. 353 filed by Petitioners Yussuf Abdikadir, Angel Armando Ayala, Jose Farias Cornejo, Abdirizak Aden Farah, Efren Orozco, Alejandro Rodriguez, Abel Perez Ruelas. * * *
		* * * * *
11/4/13	378	OPPOSITION to MOTION for Order for Compliance with August 6, 2013 Order, Dkt. 353 367 filed by Respondents Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Mike Kreuger, Wesley

DATE	DOCKET NUMBER	PROCEEDINGS
		Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Timothy Robbins, Thomas G Snow. * * *
		* * * * *
11/25/13	388	SUPPLEMENTAL BRIEF in Support of Petitioners' Motion for Compliance 367 filed by Petitioners Alejandro Rodriguez, Yussuf Abdikadir, Angel Armando Ayala, Jose Farias Cornejo, Abdirizak Aden Farah, Efren Orozco, Abel Perez Ruelas. (gk) (Entered: 11/26/2013)
		* * * * *
12/3/13	391	SUPPLEMENTAL BRIEF in Opposition to Petitioners' Motion for Compliance 367 filed by Respondents Timothy Robbins, Russell Davis, Arthur Edwards, Eric Holder, Sandra Hutchens, Mike Kreuger, Wesley Lee, Janet Napolitano, Nguyen, Davis Nighswonger, Rodney Penner, Thomas G Snow. (gk) (Entered: 12/04/2013)
		* * * * *
8/6/14	425	ORDER by Judge Terry J. Hatter, Jr.: Upon the Petitioner's Motion for Compliance 367 , the Court hereby orders as follows: Respondents

DATE	DOCKET NUMBER	PROCEEDINGS
		shall provide Petitioners with a draft Notice of Rodriguez Hearings on or before 8/18/2014. The parties shall either negotiate a mutually-acceptable revised Notice by 9/15/2014, or submit to the Court by that date competing Notice proposals from the parties for consideration by the Court. See document for further details. * * *
		* * * * *
10/2/15	458	ORDER from Ninth Circuit Court of Appeals filed * * *. The Order to Show Cause is discharged; no sanctions are imposed. IT IS SO ORDERED. (mat) (Entered: 10/02/2015)
10/28/15	459	OPINION from Ninth Circuit Court of Appeals filed * * *. We (9th CCA) reverse as to the § 1231(a) subclass, and we hold that IJs must consider the length of detention and provide bond hearings every six months. We hereby remand to the district court to enter a revised injunction consistent with our instructions. (mat) (Entered: 10/28/2015)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. CV 07-3239-TJH (RNBx)

ALEJANDRO RODRIGUEZ, ABDIRIZAK ADEN FARAH, YUSSUF ABDIKADIR, ABEL PEREZ RUELAS, JOSE FARIAS CORENEJO, ANGEL ARMANDO AYALA, FOR THEMSELVES AND ON BEHALF OF A CLASS OF SIMILARLY-SITUATED INDIVIDUALS, PETITIONERS

v.

ERIC HOLDER, UNITED STATES ATTORNEY GENERAL; JANET NAPOLITANO, SECRETARY, HOMELAND SECURITY; THOMAS G. SNOW, ACTING DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; TIMOTHY ROBBINS, FIELD OFFICE DIRECTOR, LOS ANGELES DISTRICT, IMMIGRATION AND CUSTOMS ENFORCEMENT; WESLEY LEE, OFFICER-IN-CHARGE, MIRA LOMA DETENTION CENTER; ET AL.; RODNEY PENNER, CAPTAIN, MIRA LOMA DETENTION CENTER; SANDRA HUTCHENS, SHERIFF OF ORANGE COUNTY; OFFICER NGUYEN, OFFICER-IN-CHARGE, THEO LACY FACILITY; CAPTAIN DAVIS NIGHSWONGER, COMMANDER, THEO LACY FACILITY; CAPTAIN MIKE KREUGER, OPERATIONS MANAGER, JAMES A. MUSICK FACILITY; ARTHUR EDWARDS, OFFICER-IN-CHARGE, SANTA ANA CITY JAIL; RUSSELL DAVIS, JAIL ADMINISTRATOR, SANTA ANA CITY JAIL, RESPONDENTS

Oct. 20, 2010

THIRD AMENDED COMPLAINT

JURISDICTION AND VENUE

1. Petitioners Alejandro Rodriguez, Abdirizak Farah, Yussuf Abdikadir, Jose Farias Cornejo, Abel Perez Ruelas, and Angel Ayala are non-citizens who have been subjected to prolonged incarceration at the hands of the Immigration and Customs Enforcement division of the Department of Homeland Security ("ICE"). Each of them has been incarcerated for more than six months while their immigration proceedings have been on-going without a hearing where the government has had to justify their prolonged detention. They challenge their prolonged detention without adequate process on statutory and constitutional grounds, on behalf of themselves and a class of similarly-situated detainees.

2. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. 2241 (habeas corpus), 28 U.S.C. 1651 (All Writs Act), and the Suspension Clause of Article I of the U.S. Constitution. *INS v. St. Cyr*, 533 U.S. 289, 304 (2001); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003). This Court also has jurisdiction to hear this case under 28 U.S.C. 1331, which confers jurisdiction to consider federal questions. *Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998); *cf. Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (challenges to parole release procedures cognizable under Section 1983).[1]

---

[1] This action is both a complaint for declaratory and injunctive relief under 28 U.S.C. 1331 and a petition for writ of habeas corpus under 28 U.S.C. 2241, although for ease of reference the complaint refers to "Petitioners" and "Respondents" rather than "Plaintiffs" and "Defendants."

3. This Court may grant relief under 28 U.S.C. 1331 (federal question), 28 U.S.C. 1651 (All Writs Act), 28 U.S.C. 2241 and 2243 (habeas corpus), and 28 U.S.C. 2201-02 (declaratory relief).

4. Venue is proper in the Central District of California pursuant to 28 U.S.C. 2241(d) because Petitioners and all other class members are incarcerated at Immigration and Customs Enforcement (ICE) detention facilities within this District. Venue is proper pursuant to 28 U.S.C. 1391(b) because a substantial part of the events giving rise to these claims occurred in this District.

* * * * *

FACTS AND PROCEDURAL HISTORY

Alejandro Rodriguez

33. Petitioner Alejandro Rodriguez was detained for over three years while he challenged the government's efforts to deport him to Mexico, a country where he has not lived since he was a baby.

34. Mr. Rodriguez came to this country in September 1979, when was one year old. He became a lawful permanent resident on June 4, 1987, when he was nine years old.[5]

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[5] Mr. Rodriguez narrowly missed becoming a citizen due to events beyond his control. He would have gained automatic citizenship, through his father, if his parents had legally separated prior to his 18th birthday, or if he had been under the age of 18 at the time of the enactment of the Child Citizenship Protection Act of 2000. However, his parents formally separated shortly after he turned 18, and he was 23 by the time the Act passed. See 8 U.S.C. 1431.

35. On or about July 29, 1998, Mr. Rodriguez pled guilty to Unlawful Driving or Taking of a Vehicle under section 10851(A) of the California Vehicle Code (CVC). For this crime he was sentenced to two years. Five years later, on or about October 21, 2003, he pled no contest and was convicted of Possession of a Controlled Substance under California Health and Safety Code section 11377(A), for which he received formal probation of 5 years under the conditions of California Prop 36. He was transferred to DHS custody after his arrest, on April 10, 2004. He was detained for over three years after that transfer, until the government released him shortly after the filing of the class certification motion in this case.

36. The government charged Mr. Rodriguez with being removable based on his drug offense on April 15, 2004. At his removal hearing, Mr. Rodriguez contested that his conviction rendered him removable, and argued in the alternative that he was eligible for relief from removal.[6]

37. The government received a continuance to alter the charging documents in his case, after which it charged Mr. Rodriguez with being deportable on an additional ground based on his 1998 conviction for theft. Subsequently, on July 21, 2004, an immigration judge ordered him removed, holding that both his drug

---

[6] An ICE officer initially deemed him eligible for release on bond, and set the bond at $15,000. However, Mr. Rodriguez was unable to afford the bond in that amount, and an immigration judge denied his request to lower the bond amount. Shortly after the BIA decided his case in 2004, the government revoked that bond order and ordered him detained without bond under the mandatory detention provision codified at 8 U.S.C. 1226(c).

offense and his theft offense rendered him removable. The Judge held that the drug offense was a controlled substance offense triggering removal and that the theft conviction was an aggravated felony, triggering mandatory removal.[7] The immigration judge ordered him deported to Mexico. Mr. Rodriguez appealed that decision to the BIA.

38. On December 21, 2004, the Board reversed the Judge's decision that the drug possession conviction rendered Mr. Rodriguez removable, but upheld the decision that his theft conviction was an aggravated felony.

39. On December 28, 2004, Mr. Rodriguez timely petitioned for review of the Board's decision to the Ninth Circuit, arguing inter alia that his crime was not an aggravated felony as defined by the Immigration and Nationality Act. Mr. Rodriugez then sought a stay of removal, which the government opposed. Thereafter, the Ninth Circuit granted his request for a stay of removal, and therefore necessarily found that

---

[7] Although not charged in the immigration charging document, the government also presented evidence from court records that, on or about October 24, 2003, a man using the name Alejandro Rodriguez (who also used another name as an alias) pled guilty to California Health and Safety Code section 11550(a), Under the Influence of a Controlled Substance, and sentenced to 120 days in jail, which he served during the same time that Mr. Rodriguez was released and reporting to the court for his conviction of October 21, 2003. The date of conviction makes it highly unlikely that Mr. Rodriguez was in fact convicted of this offense. Nonetheless, the IJ ruled that this conviction constituted a second drug offense, rendering Petitioner removable on the basis of the drug convictions.

his case presents substantial legal claims. See Maharaj v. Ashcroft, 295 F.3d 963, 966 (9th Cir. 2002).

40. While Mr. Rodriguez's case was pending at the Ninth Circuit, that court decided another case holding that Mr. Rodriguez's theft conviction was not an aggravated felony. The government then moved to hold his case in abeyance while it sought en banc review of that decision. The Ninth Circuit granted the motion, even though he had already been detained for 15 months at that time. After en banc review failed, the government sought Supreme Court review in the other case, and again requested that Mr. Rodriguez's case be held. After the Supreme Court granted cert, his case was held still further. In the end, his case was held in abeyance for over two years, but none of the decisions for which it was held established that he was subject to mandatory removal, as the immigration courts had found.

41. Eventually, the government largely conceded that Mr. Rodriguez's convictions did not subject him to mandatory removal, and it agreed to remand his case to the immigration courts on this basis. His case is now back before an immigration judge, who will consider his (exceedingly strong) application for cancellation of removal in January 2011.

42. During the three years of Mr. Rodriguez's detention, the government never held a hearing as to whether his prolonged detention is justified. In fact, the only process Mr. Rodriguez received with respect to his detention was what the government calls "File Custody Reviews." The first of these occurred on March 10, 2005, when an ICE agent presumably read through his file and issued a "Decision to Continue

Detention." No ICE official interviewed Mr. Rodriguez, let alone held a hearing, prior to making this decision. Instead, ICE merely gave him a questionnaire to fill out, asking for information regarding family members, employment experience, and any outstanding probation requirements. Although Mr. Rodriguez documented his work as a dental assistant and his extensive family ties, including his U.S. citizen father and sister, and his lawful permanent resident mother and brother, ICE denied his request for release, stating simply that he would remain detained until the Ninth Circuit rendered its decision. The notice offered no further explanation for the decision to continue detention, made no mention of how long Mr. Rodriguez had been detained (eleven months at that time), and offered no suggestions as to what steps he might take to effect a different outcome in any future decisions.

43. In September 2005, ICE conducted another file custody review, which it apparently denied for similar reasons, and in March 2006 the process was repeated again. In each of these instances, the government did not even provide Mr. Rodriguez with a written decision as to why he would remain incarcerated for many more months. In March 2007 the government chose to continue Mr. Rodriguez's detention again. At the time of that last custody decision he had been detained for nearly three years, yet the decision made no mention of this fact. Instead, the decision asserted that continued detention was justified because the Ninth Circuit would decide his case soon, which was entirely incorrect.

44. Shortly after the original class complaint in this case was filed, the government released Mr. Rodriguez from detention, but continued to subject him to severe restraints on his liberty which remain in effect, including a requirement that he abide by a strict curfew and wear an electronic monitoring device at all times. The government has continued to require that he abide by these restrictions, and has never afforded him a hearing before an immigration judge to determine if they are necessary to ensure his appearance at his final removal hearing, where he will likely be granted cancellation of removal.

Abdirizak Aden Farah

45. Abdirizak Aden Farah is a Somali refugee who has been detained for over eight months at the Mira Loma facility without any kind of hearing to determine whether his detention is justified.

46. Mr. Farah was born on May 5, 1987 in Kismayo, Somalia. His family lived in Mogadishu for the early part of his childhood. Thousands of refugees have fled Somalia since the country's civil war erupted approximately twenty years ago. Today, there is no functioning government in most of Somalia, and the country exists in a state of constant civil war and virtual anarchy. The United Nations High Commission for Refugees issued guidelines in May 2010 largely advising against the return of anyone from central or southern Somalia, including even asylum seekers whose claims had been rejected. With respect to the capital of Mogadishu (where Mr. Farah lived prior to suffering persecution), a Human Rights Watch researcher has stated that "Mogadishu is one of the world's most dangerous places . . . Returning peo-

ple there is not just risky; it's a potential death sentence."

47. Mr. Farah first faced persecution in Somalia as a child, when his family was forced to flee Mogadishu because they were members of the minority Marehan clan who faced danger from members of the Hawiye, a powerful majority clan in Somalia. Eventually, the family was able to settle in Kismayo, a city in Somalia where the Hawiye were not powerful. Several years later, his father was shot and killed by members of a Hawiye sub-clan when he returned briefly to Mogadishu to try to sell the family home.

48. Mr. Farah fled Somalia in April 2009 in order to escape the al-Shabaab, a militant Islamic organization that is trying to take over Somalia. Al-Shabaab militants shot and killed his brother Mohamed because he worked as a driver for the Somali Transitional Federal Government (TFG) in the summer of 2007. These same militants nearly killed Mr. Farah in the same attack by slashing his wrist with a knife. Afterward, al-Shabaab members repeatedly accused him of working for the TFG and finally threatened to kill him if he did not join them.

49. After the last of these threats, Mr. Farah's uncle sent money for him to flee. With the assistance of several people, he arrived by a circuitous route at the southern border of the United States, where he presented himself at the border and requested asylum on or about December 31, 2009. An asylum officer found his claim credible, and referred him for a full asylum hearing before an immigration judge.

50. Mr. Farah has had several hearings in his immigration case, the first of which took place in March 2010. At several of these, the immigration judge continued his hearing because he did not have a lawyer, while others were cancelled because the judge or the translator were not present. His next hearing is scheduled for late October 2010.

51. Mr. Farah has applied for release on parole under 8 C.F.R. 212(d)(5)(A). Under these procedures, the decision whether or not to release him is made by a single officer, with no appeal process, and without providing a hearing of any kind. An ICE officer denied him release without meaningful explanation.

52. Mr. Farah's wife and baby daughter remain in Somalia. He has been unable to establish any contact with them because of his detention.

Yussuf Abdikadir

53. Yussuf Abdikadir is also a Somalian refugee. He has been detained by immigration authorities since early March 2010, and also has not received a detention hearing of any kind.

54. Mr. Abdikadir was born on October 5, 1980.[8] He lived with his family—including his parents and five siblings—as a child in Mogadishu. He is also a member of a minority clan in Somalia.

55. In 1991, as the Somali political structure disintegrated, a militia associated with a dominant clan, the Hawiye, attacked Mr. Abdikadir's family. They killed

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[8] Yussuf is his given name, while Abdikadir is his father's given name.

his two older brothers, his father, and his grandmother. They also severely mistreated other members of the family, and raped his mother.

56. Mr. Abdikadir and his surviving family members then fled to Kenya, where they lived in various refugee camps for most of the next two decades. He married Shukri Hussein, also a Somalian refugee, while in the camps, and the couple had three children. (Ms. Hussein also has a son from a prior relationship, who is now Mr. Abdikadir's step-son).

57. Life in the refugee camps was very hard for Mr. Abdikadir and his family. Kenya granted them no permanent status, and as a result they were forced to live in the camps and denied the right to work. At the same time, the Kenyan government and international agencies failed to provide sufficient food for the refugees. He and his family would have to wait for hours during the heat of the day to obtain their small food rations, and often were mistreated by the Kenyan authorities while waiting. Mr. Abdikadir occasionally worked illegally in order to supplement his family's meager provisions, but Kenyan authorities arrested and punished him for doing so. The Kenyan authorities also did little if anything to stop the bandits who would raid the camps at night, raping camp residents and pillaging their belongings.

58. After life in the camps became too difficult, Mr. Abdikadir's mother managed to sell some land the family owned in Somalia, and used these proceeds to procure funds to allow her son to escape. Unable to return to Somalia or survive further life in the Kenyan refugee camps, Mr. Abdikadir fled. He traveled a circuitous route in search of a country with refugee

protections, and ultimately arrived at the southern border of the United States seeking asylum.

59. At the border crossing from Tijuana he presented a birth certificate and applied for asylum, entering ICE detention in March 2010. He was sent to Mira Loma shortly afterward, and passed his credible fear interview several weeks later, in approximately April 2010.

60. Mr. Abdikadir has been before an immigration judge several times since then, but has yet to even submit an application for asylum, because he was unable to find a lawyer to represent him and speaks virtually no English.

61. Mr. Abdikadir has also applied for release on parole under 8 C.F.R. 212(d)(5)(A). As with Mr. Farah, the decision whether or not to release Mr. Abdikadir is made by a single officer, with no appeal process, and without a hearing of any kind. Mr. Abdikadir requested release from this officer, and in doing so provided his birth certificate as well as a sworn affidavit from a friend of his who lives in San Diego and is willing to house and assist him. Nonetheless, his parole request was denied. The sole explanation provided was a check mark in a box next to a paragraph which states "You have not established to ICE's satisfaction that you will appear as required for immigration hearings, enforcement appointments, or other matters, if you are paroled from detention." Other than requesting a redetermination based on changed circumstances, Mr. Abdikadir has no recourse to any further process for appeal.

62. Mr. Abdikadir has suffered during his time in detention, not only because of the traumatic effects of detention in general on those who have suffered past persecution, but also because of his medical problems. Mr. Abdikadir has some kind of problem concerning his eyes—perhaps tied to light sensitivity—that causes them to be constantly red and irritated. Although he has sought medical attention for this problem at the Mira Loma Detention Center, the clinic there has not provided him with any medication that has addressed the problem.

63. Mr. Abdikadir has been unable to communicate with his family while in detention. He awaits the opportunity to win his release and his status, so that he can begin to recover from the years of suffering he has faced, and also so that he can speak with and hopefully some day re-unite with his wife and children. Given that he has not even submitted an asylum application yet, he will remain incarcerated without a hearing for months more absent this Court's intervention.

Abel Perez Ruelas

64. Abel Perez Ruelas is a citizen of Mexico. He has been in immigration detention at Mira Loma Detention Center for 17 months, since April 8, 2009.

65. Mr. Perez Ruelas was born on January 25, 1967 in Jalisco, Mexico. In 1996, he met Maria del Rosario, with whom he had a daughter, Azirit Lessandra, one year later.

66. He was admitted to the United States in 2002 on a visitors' visa, two years after he broke up and lost contact with with Ms. del Rosario.

67. In approximately 2007, about five years after Mr. Perez-Ruelas came to live in the United States, he received a call from his mother, who told him that Ms. del Rosario had died in childbirth in Mexico, and that his daughter had been sent to live with her mother's parents. Since then, Mr. Perez Ruelas has been living with the hope that one day he may bring his daughter to the United States to live with him.

68. On December 22, 2008, Mr. Perez Ruelas married Maria Navichoque Perez, a U.S. citizen. She is a nurse at the Los Angeles Jewish Home, a non-profit senior living facility in Reseda, California. The couple filed to adjust his status based on their marriage in approximately February 2009.

69. After his marriage, Mr. Perez Ruelas became the stepfather of Maria Perez's four children, all of whom are U.S. citizens by birth. The two youngest children, Hector and Emily, live with Mr. Perez Ruelas and his wife in their home in Reseda, California.

70. Mr. Perez Ruelas has lived and worked in the United States for almost eight years. He works in construction, primarily with cement and tiles. Prior to his detention, he regularly attended church with his wife in Pacoima and Reseda.

71. Mr. Perez Ruelas has had three prior convictions for driving under the influence of alcohol, none for which he spent more than two months in jail. Mr. Perez Ruelas served three months of probation for his first offense in 1994; he served 10 days in jail for his second, a decade later in 2004; and he served 60 days in jail for his third, which occurred four years later. Pursuant to his sentence for the last conviction, Mr.

Perez Ruelas has diligently attended Alcoholics Anonymous for over a year, and has continued attending AA meetings even while in immigration detention.

72. On or about April 8, 2009, Mr. Perez Ruelas was released from jail for his last offense. Immigration and Customs Enforcement officials immediately took him into immigration custody, notwithstanding his pending application to adjust his status based on his marriage. At the time, Mr. Perez-Ruelas was in the process of becoming a lawful permanent resident of the United States.

73. Mr. Perez Ruelas was given a bond hearing on April 21, 2009, pursuant to 8 U.S.C. 1226(a), at which he bore the burden to prove that he was not a danger or flight risk. Upon information and belief, the immigration judge knew that Mr. Perez Ruelas was married to a U.S. citizen and that he had a pending adjustinent application, but nonetheless the judge denied him release on bail. He told Mr. Perez Ruelas that his prior DUI convictions made him a danger to society, even though his sentence had long since expired.

74. With the assistance of his attorney, Mr. Perez Ruelas applied for a bond reduction in February 2010. At that hearing, the immigration judge set a bond of $5,000, an amount too high for Mr. Perez Ruelas's family to pay.

75. Because he could not pay, Mr. Perez Ruelas remained in immigration detention—where he has been for the past 16 months awaiting adjudication of his case. His last hearing was over four months ago, on April 15, 2010.

76. On July 30, 2010, Mr. Perez Ruelas and his wife received notice that their application to adjust his status had been approved, with a priority date of March 22, 2009. Although he is entitled to adjust status immediately and will no doubt ultimately prevail in his immigration case, he nonetheless remains detained for no apparent reason, merely because under the stringent standard applied at his bond hearing he cannot pay the bond that the immigration judge set in his case.

Jose Farias Cornejo

77. Jose Farias Cornejo is a citizen of Mexico and a lawful permanent resident of the United States. He has been in immigration detention at Mira Loma Detention Center for over eleven months, since September 14, 2009.

78. Mr. Farias Cornejo was born on August 14, 1984 in Michoacan, Mexico. He was brought to the United States prior to his first birthday by his parents, who were migrant farm workers. He has never left this country, and speaks fluent English.

79. Mr. Farias Cornejo has four siblings. All four are U.S. citizens. Mr. Farias Cornejo's mother is also a lawful permanent resident of the United States.

80. Mr. Farias Cornejo spent his childhood years in Washington and his adolescence in California because his parents were migrant farm workers. He attended elementary school in San Diego for a few years before moving to Montclair, California to attend middle school and high school. He took special education classes at Montclair High School because of his diagnosed learning disability.

81. After graduating from high school, Mr. Farias Cornejo worked at various jobs near his hometown in California, including in construction—manufacturing jacuzzis and landscaping.

82. Mr. Farias Cornejo has had several prior convictions. In 2007, he was convicted of possession of methamphetamine and was given the opportunity to receive substance abuse treatment as an alternative to incarceration under California Proposition 36. Mr. Farias Cornejo diligently completed his drug treatment classes, but because he could not afford to pay the mandatory fine, he was sentenced to 180 days in jail.

83. Upon information and belief, in 2009 Mr. Farias Cornejo was convicted of a misdemeanor California theft offense, for which he spent 14 days in jail. In that same year, he was convicted of being under the influence of a controlled substance, for which he spent 60 days in jail.

84. Shortly after serving his last sentence, in September 2009, federal immigration officials initiated removal proceedings against him and placed him in immigration detention, citing their authority to mandatorily detain any individual with a prior controlled substance offense under 8 U.S.C. 1226(c).

85. Although the government contends that Mr. Farias Cornejo is subject to "mandatory detention" without a bond hearing under that provision, it has acknowledged that he is eligible for relief from removal in the form of cancellation of removal under 8 U.S.C. 1229b, because he has not been convicted of an "aggravated felony."

86. Mr. Farias Cornejo was given a cancellation application on October of 2009, but struggled to find an attorney to assist him in completing it. After five months in detention, he finally found an attorney, but that attorney did not file his application. Eventually Mr. Farias Cornejo found a different attorney to represent him, in June of this year. Through his new attorney Mr. Farias Cornejo finally filed his cancellation application, nearly ten months after he was placed into immigration detention.

87. Upon information and belief, at his cancellation hearing on August 17, 2010, the government stated that it had no objection to his application. However, the immigration judge told Mr. Farias Cornejo that he had an outstanding warrant, and therefore refused to adjudicate the application. Instead, the judge set his next court hearing for November 15, 2010, apparently on the assumption that his warrant would be resolved prior to that time.

88. Although Mr. Farias Cornejo poses no flight risk, is not a danger to the community, and is eligible for relief from removal, he remains subject to continued detention. He has never had a hearing to determine whether his detention remains justified even though he has now been incarcerated for nearly a year.

* * * * *

CLASS-WIDE ALLEGATIONS

103. Petitioners are amongst approximately at least 350 detainees, if not more, in the Central District on any given day whom the government has incarcerated for more than six months without proving at an adequate hearing that their prolonged detention is justi-

fied.[10] Indeed, it is the government's policy or practice to detain non-citizens under the general immigration detention statutes for prolonged periods of time pending completion of their removal proceedings without providing them with such hearings.

104. In response, Petitioners bring this action on behalf of themselves and all other persons similarly-situated, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), or in the alternative, as a representative action pursuant to a procedure analogous to that provided in Rules 23(a) and 23(b)(2). *See Rodriguez v. Hayes*, 578 F.3d 1032, 1047 (9th Cir. 2009) (allowing this case to proceed as a class action habeas petition).

105. Petitioners represent a class of all people within the Central District of California who 1) are or will be detained for longer than six months pursuant to the general immigration detention statutes pending completion of removal proceedings, including judicial review, 2) are not detained pursuant to one of the national security detention statutes at 8 U.S.C. 1226a and

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[10] This Court ordered the government to produce a "snapshot" list of all class members on a particulate date, which the government produced for the date of April 21, 2010. As of that day, there were 352 class members—people incarcerated in ICE custody in the Central District who had been in ICE custody for at least 180 days, and whose cases remained pending either before the immigration courts or before the federal courts with a stay of removal in effect. The list also included a number of people who were not class members because they were not incarcerated in detention centers at all, but rather in juvenile facilities, and also two people who were not class members because they were had final removal orders with no stay of removal in effect.

8 U.S.C. 1531-37 and 3) have not been afforded a hearing to determine whether their prolonged detention is justified.

106. The class includes people who were present in an ICE detention facility in the Central District on or after the date on which the original complaint was filed as long as they had been detained by ICE for more than six months at that time, even if they are no longer in the Central District; it therefore includes people subject to the mass transfer of detainees from the San Pedro Detention Facility in October 2007, as long as those people remain in an ICE detention facility somewhere and their cases remain pending.

107. The class excludes people who have a final order of removal and no stay of that removal order, such that the government has legal authority to remove them.

108. The class excludes juveniles who are held under the care of the Office of Refugee Resettlement. It also excludes people imprisoned pursuant to a criminal sentence, including individuals who complete removal proceedings and any judicial review while serving such sentences.

109. Pursuant to this Court's directive that the parties propose sub-classes, Petitioners propose that the Court also certify four sub-classes in this action, corresponding to each of the general detention statutes. Petitioners propose to represent a sub-class of class members detained under 8 U.S.C. 1225(b) represented by Mr. Farah and Mr. Abdikadir, a sub-class of class members detained under 8 U.S.C. 1226(a) represented by Mr. Rodriguez and Mr. Perez Ruelas, a sub-class of class members detained under 8 U.S.C. 1226(c) repre-

sented by Mr. Farias Cornejo, and a sub-class of class members detained under 8 U.S.C. 1231(a) represented by Mr. Ayala.

110. For each putative sub-class and each detention statute, Petitioners' counsel estimates that there will be far more than forty other sub-class members in this District who, like each of the Petitioners, have been detained for more than six months, are detained under that particular general detention statute, and have not been afforded a constitutionally-adequate hearing to determine whether their prolonged detention is justified. Indeed, there may well be more than forty members of each sub-class detained in the Central District on any given single day.

111. The proposed class and sub-classes meet the requirements of Fed. R. Civ. Pro. 23(a)(2). For the class as a whole, there are several common questions of law and fact in the action. These include 1) whether the government has a policy or general practice of detaining non-citizens in removal proceedings for longer than six months under the general immigration detention statutes without providing an adequate hearing to determine whether such prolonged detention is justified, 2) whether any general immigration detention statute authorizes this detention policy or practice, and 3) whether this detention policy or practice violates the Due Process Clause. *Rodriguez*, 578 F.3d at 1048-49 (finding common questions).

112. There are additional common questions of law that pertain to each subclass. These include: for Subclass 1, whether 8 U.S.C. 1225(b) authorizes the policy or general practice of detaining non-citizens in removal proceedings for longer than six months with-

out providing a hearing where the government must establish that such detention is justified; for Subclass 2, whether 8 U.S.C. § 1226(a) authorizes this detention policy or practice; for Subclass 3, whether 8 U.S.C. § 1226(c) authorizes this detention policy or practice; and for Subclass 4 whether § 1231(a) authorizes this detention policy or practice.

113. The claims of the named representative Petitioners are typical of the claims of each proposed subclass and of the class as a whole. Like all of the proposed class members, the named Petitioners will have been detained, pursuant to the government's policy and practice, for at least six months under the relevant general immigration detention statutes, without having been afforded an adequate hearing where the government has shown that their prolonged detention is justified. *Rodriguez*, 578 F.3d at 1048-50.

114. The named Petitioners will fairly and adequately represent the interests of all members of the proposed class and sub-classes because they seek relief identical to the relief sought by all class members, and because they have no interests adverse to other class members. Moreover, the named Petitioners are represented by pro bono counsel from the ACLU of Southern California, the ACLU Immigrants' Rights Project, the Stanford Law School Immigrants' Rights Clinic, and the law firm of Sidley Austin LLP. These organizations and the attorneys working for them have extensive experience litigating on behalf of detained immigrants and broad experience litigating class actions. *Rodriguez*, 578 F.3d at 1050.

115. Respondents have acted on grounds generally applicable to the class and to each subclass through

their policy and practice of detaining non-citizens in removal proceedings for longer than six months under each of the general immigration detention statutes without providing an adequate hearing where the government has shown that their prolonged detention is justified, making class-wide declaratory and injunctive relief appropriate.

* * * * *

FIRST CAUSE OF ACTION

Violation of Immigration and Nationality Act and Regulations

124. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

125. Respondents' continued detention of Petitioners and other putative class members under the general immigration detention statutes violates the Immigration and Nationality Act, insofar as the statutes under which they are detained do not authorize detention for a prolonged period of time absent an adequate hearing at which the government shows that their detention remains justified.

SECOND CAUSE OF ACTION

Violation of Fifth Amendment Due Process (Right to a Constitutionally Adequate Custody Hearing)

126. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

127. Respondents' continued detention of Petitioners and other class members without an adequate hearing

where the government shows that their prolonged detention remains justified violates the right to be free of prolonged non-criminal detention without adequate justification and sufficient procedural safeguards, as guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court grant the following relief:

a. Assume jurisdiction of this matter;

b. Certify a class and sub-classes as appropriate under Fed. R. Civ. Pro. 23 (or other analogous procedures) consisting of all people within the Central District of California who 1) are or will be detained for longer than six months pursuant to the general immigration detention statutes pending completion of removal proceedings, including judicial review, 2) are not detained pursuant to one of the national security detention statutes at 8 U.S.C. 1226a and 8 U.S.C. 1531-37 and 3) have not been afforded a hearing to determine whether their prolonged detention is justified;

c. Appoint Petitioners Rodriguez and Perez Ruelas, as representatives of a sub-class of class members detained under 8 U.S.C. 1226(a); Petitioners Farah and Abdikadir as representatives of a sub-class of class members detained under 8 U.S.C. 1225(b); Petitioner Farias Cornejo as the representative of a sub-class of class members detained under 8 U.S.C. 1226(c); and Petitioner Ayala as the representative of a sub-class of class members detained under 8 U.S.C. 1231.

d. Appoint Petitioners' Counsel as Counsel for the Class and each subclass;

e. Order Respondents to provide, after giving notice, individual hearings before an immigration judge for Petitioners and each member of the class, at which Respondents will bear the burden to prove by clear and convincing evidence that no reasonable conditions will ensure the detainee's presence in the event of removal and protect the community from serious danger, despite the prolonged length of detention at issue;

f. Declare that Respondents' failure to provide Petitioners and the members of the class with adequate hearings violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment;

g. Enjoin Respondents from failing to provide Petitioners and each member of the Class, upon notice, with adequate hearings before an immigration judge (as specified above in subsection (e) of this Prayer);

h. Grant Petitioners reasonable attorneys' fees, costs, and other disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412;

i. Grant such other relief as the Court deems just and equitable.

Respectfully submitted,

ACLU OF SOUTHERN CALIFORNIA

By /s/ AHILAN T. ARULANANTHAM
AHILAN T. ARULANANTHAM
Counsel for Petitioners

Dated: Oct. 20, 2010

DEPARTMENT OF HOMELAND SECURITY

NOTICE OF CUSTODY DETERMINATION

Alien's Name: _____ A-File Number: _____

Date: _____

Event ID _____ Subject ID _____

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

☐ Detained by the Department of Homeland Security

☐ Released (check all that apply):

☐ Under bond in the amount of $ _____

☐ On your own recognizance

☐ Under other conditions [Additional document(s) will be provided]

_____ _____

Name and Signature of Authorized Officer Date and Time of Custody Determination

_____

Office Location/Address

You may request a review of this custody determination by an immigration judge

☐ I acknowledge receipt of this notification and

☐ I **do** request an immigration judge review of this custody determination

☐ I **do not** request an immigration judge review of this custody determination

_____ _____

Signature of Alien Date

The contents of this notice were read to _____ in the _____ language

(Name of Alien) (Name of Language)

_____ _____

Name and Signature of Officer Name or Number of Interpreter (if applicable)

_____

Title

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture

DISTRIBUTION:	**ICE**
DIRECTIVE NO:	**11002.1**
ISSUE DATE:	**December 8, 2009**
EFFECTIVE DATE:	**January 4, 2010**
SUPERSEDES:	**See section 3.**
FEA NUMBER:	**601-05**

1. **PURPOSE.** The purpose of this ICE policy directive is to ensure transparent, consistent, and considered ICE parole determinations for arriving aliens seeking asylum in the United States. This directive provides guidance to Detention and Removal Operations (DRO) Field Office personnel for exercising their discretion to consider the parole of arriving aliens processed under the expedited removal provisions of section 235 of the Immigration and Nationality Act (INA) who have been found to have a "credible fear" of persecution or torture by U.S. Citizenship and Immigration Services (USCIS) or an immigration judge of the Executive Office for Immigration Review. This directive establishes a quality assurance process that includes record-keeping requirements to ensure accountability and compliance with the procedures set forth herein.

1.1. This directive does not apply to aliens in DRO custody under INA § 236. This directive applies only to arriving aliens who have been

found by USCIS or an immigration judge to have a credible fear of persecution or torture.

2. **AUTHORITIES/REFERENCES.**

2.1. INA §§ 208, 212(d)(5), 235(b), and 241(b)(3); 8 U.S.C. §§ 1158, 1182(d)(5), 1225(b), and 1231(b)(3); 8 C.F.R. §§ 1.1(q), 208.30(e)-(f), 212.5 and 235.3.

2.2. Department of Homeland Security Delegation Number 7030.2, "Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Custom Enforcement" (Nov. 13, 2004).

2.3. ICE Delegations of Authority to the Directors, Detention and Removal and Investigations and to Field Office Directors, Special Agents in Charge and Certain Other Officers of the Bureau of Immigration and Customs Enforcement, No. 0001 (June 6, 2003).

3. **SUPERSEDED POLICIES AND GUIDANCE.** The following ICE directive is hereby superseded:

3.1. ICE Policy Directive No. 7-1.0, "Parole of Arriving Aliens Found to Have a 'Credible Fear' of Persecution or Torture" (Nov. 6, 2007).

4. **BACKGROUND.**

4.1. Arriving aliens processed under the expedited removal provisions of INA §235(b) may pursue asylum and related forms of protection from removal if they successfully demonstrate to USCIS or an immigration judge a credible fear of persecution or torture.

4.2. Arriving aliens who establish a credible fear of persecution or torture are to be detained for further consideration of the application for asylum. INA § 235(b)(1)(B)(ii). Such aliens, however, may be paroled on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding. 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c) (providing that aliens referred for INA § 240 removal proceedings, including those who have a credible fear of persecution or torture, may be paroled under § 212.5(b) standards).

4.3. The applicable regulations describe five categories of aliens who may meet the parole standards based on a case-by-case determination, provided they do not present a flight risk or security risk: (1) aliens who have serious medical conditions, where continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; and (5) aliens whose continued detention is not in the public interest. *See* 8 C.F.R. § 212.5(b). *But compare* 8 C.F.R. § 235.3(b)(4)(ii) (stating that arriving aliens who have not been determined to have a credible fear will not be paroled unless parole is necessary in light of a "medical emergency or is necessary for a legitimate law enforcement objective").

4.4. While the first four of these categories are largely self-explanatory, the term "public interest" is open to considerable interpretation. This directive explains how the term is to be interpreted by DRO when it decides whether to parole arriving aliens determined to have a credible fear. The directive also mandates uniform record-keeping and review requirements for such decisions. Parole remains an inherently discretionary determination entrusted to the agency; this directive serves to guide the exercise of that discretion.

5. **DEFINITIONS:**

5.1. **Arriving Alien.** For purposes of this directive, "arriving alien" has the same definition as provided for in 8 C.F.R. § 1.1(q) and 1001.1(q).

5.2. **Credible Fear.** For purposes of this directive, with respect to an alien processed under the INA § 235(b) "expedited removal" provisions, "credible fear" means a finding by USCIS or an immigration judge that, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the interviewing USCIS officer or immigration judge, there is a significant possibility that alien could establish eligibility for asylum under INA § 208, withholding of removal under INA § 241(b)(3), or protection from removal under the Convention Against Torture.

5.3. **Parole.** For purposes of this directive, "parole" is an administrative measure used by ICE to

temporarily authorize the release from immigration detention of an inadmissible arriving alien found to have a credible fear of persecution or torture, without lawfully admitting the alien. Parole does not constitute a lawful admission or determination of admissibility, *see* INA §§ 212(d)(5)(A), 101(a)(13)(B), and reasonable conditions may be imposed on the parole, *see* 8 C.F.R. § 212.5(d). By statute, parole may be used, in the discretion of ICE and under such conditions as ICE may prescribe, only for urgent humanitarian reasons or for significant public benefit. As interpreted by regulation, "urgent humanitarian reasons" and "significant public benefit" include the five categories set forth in 8 C.F.R. § 212.5(b) and listed in paragraph 4.3 of this directive, including the general category of "aliens whose continued detention is not in the public interest."

6. **POLICY.**

6.1. As soon as practicable following a credible fear determination by USCIS for an arriving alien detained by DRO, DRO shall provide the alien with the attached *Parole Advisal and Scheduling Notification.* This form informs the alien that he or she will be interviewed for potential parole from DRO custody and notifies the alien of the date of the scheduled interview and the deadline for submitting any documentary material supporting his or her eligibility for parole. The contents of the notification shall be explained to such aliens in a language they under-

stand. In determining whether detained arriving aliens found to have a credible fear should be paroled from custody, DRO shall proceed in accordance with the terms of this directive.

6.2. Each alien's eligibility for parole should be considered and analyzed on its own merits and based on the facts of the individual alien's case. However, when an arriving alien found to have a credible fear establishes to the satisfaction of DRO his or her identity and that he or she presents neither a flight risk nor danger to the community, DRO should, absent additional factors (as described in paragraph 8.3 of this directive), parole the alien on the basis that his or her continued detention is not in the public interest. DRO Field Offices shall uniformly document their parole decision-making processes using the attached *Record of Determination/ Parole Determination Worksheet.*

6.3. Consistent with the terms of this directive, DRO shall maintain national and local statistics on parole determinations and have a quality assurance process in place to monitor parole decision-making, as provided for in sections 7 and 8 of this directive.

6.4. In conducting parole determinations for arriving aliens in custody after they are found to have a credible fear of persecution or torture, DRO shall follow the procedures set forth in section 8 of this directive.

6.5. DRO shall provide every alien subject to this directive with written notification of the parole decision, including a brief explanation of the reasons for any decision to deny parole. When DRO denies parole under this directive, it should also advise the alien that he or she may request redetermination of this decision based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding. DRO shall ensure reasonable access to translation or interpreter services if notification is provided to the alien in a language other than his or her native language and the alien cannot communicate effectively in that language.

6.6. Written notifications of parole decisions shall be provided to aliens subject to this directive and, if represented, their representative within seven days of the date an alien is initially interviewed for parole or the date the alien requests a parole redetermination, absent reasonable justification for delay in providing such notification.

6.7. A decision to grant or deny parole shall be prepared by a DRO officer assigned such duties within his or her respective DRO Field Office. The decision shall pass through at least one level of supervisory review, and concurrence must be finally approved by the Field Officer Director (FOD), Deputy FOD (DFOD), or Assistant FOD (AFOD), where authorized by the FOD.

7. **RESPONSIBILITIES.**

7.1. The **DRO Director** is responsible for the overall management of the parole decision-making process for arriving aliens in DRO custody following determinations that they have a credible fear of persecution or torture.

7.2. The **DRO Assistant Director for Operations** is responsible for:

1) Ensuring considered, consistent DRO parole decision-making and recordkeeping nationwide in cases of arriving aliens found to have a credible fear;

2) Overseeing monthly tracking of parole statistics by all DRO Field Offices for such cases; and

3) Overseeing an effective national quality assurance program that monitors the Field Offices to ensure compliance with this directive.

7.3. **DRO Field Office Directors** are responsible for:

1) Implementing this policy and quality assurance processes;

2) Maintaining a log of parole adjudications for credible fear cases within their respective geographic areas of responsibility, including copies of the *Record of Determination/Parole Determination Worksheet*;

3) Providing monthly statistical reports on parole decisions for arriving aliens found to have a credible fear;

4) Making the final decision to grant or deny parole for arriving aliens found to have a credible fear within their respective areas of responsibility or, alternatively, delegating such responsibility to their DFODs or AFODs (in which case, FODs nevertheless retain overall responsibility for their office's compliance with this directive regardless of delegating signatory responsibility to DFODs or AFODs); and

5) Ensuring that DRO field personnel within their respective areas of responsibility who will be assigned to make parole determinations are familiar with this directive and corresponding legal authorities.

7.4. **DRO Deputy Field Office Directors** are responsible for reviewing, and forwarding for their respective FODs' approval, parole decisions prepared by their subordinates in the cases of arriving aliens found to have a credible fear of persecution or torture. Alternatively, DFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.

7.5. **Assistant Field Office Directors** are responsible for reviewing, and forwarding for their respective DFODs' or FODs' approval, parole decisions prepared by their subordinates in the cases or arriving aliens found to have a credible fear of persecution or torture. Alternatively,

AFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.

7.6. As applicable, **DRO field personnel** so assigned by their local chains-of-command are responsible for providing detained arriving aliens found to have a credible fear with the attached *Parole Advisal and Scheduling Notification* and for fully and accurately completing the attached *Record of Determination/Parole Determination Worksheet* in accordance with this directive and corresponding legal authorities.

8. **PROCEDURES.**

8.1. As soon as practicable following a finding that an arriving alien has a credible fear, the DRO Field Office with custody of the alien shall provide the attached *Parole Advisal and Scheduling Notification* to the alien and explain the contents of the notification to the alien in a language he or she understands, through an interpreter if necessary. The Field Office will complete the relevant portions of the notification, indicating the time when the alien will receive an initial interview on his or her eligibility for parole and the date by which any documentary evidence the alien wishes considered should be provided, as well as instructions for how any such information should be provided.

8.2. Unless an additional reasonable period of time is necessary (e.g., due to operational exigencies

or an alien's illness or request for additional time to obtain documentation), no later than seven days following a finding that an arriving alien has a credible fear, a DRO officer familiar with the requirements of this directive and corresponding legal authorities must conduct an interview with the alien to assess his or her eligibility for parole. Within that same period, the officer must complete the *Record of Determination/Parole Determination Worksheet* and submit it for supervisory review. If the officer concludes that parole should be denied, the officer should draft a letter to this effect for the FOD's, DFOD's, or AFOD's signature to be provided to the alien or the alien's representative and forward this letter for supervisory review along with the completed *Record of Determination/Parole Determination Worksheet.* The letter must include a brief explanation of the reasons for denying parole and notify the alien that he or she may request redetermination of parole based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding.

8.3. An alien should be paroled under this directive is DRO determines, in accordance with paragraphs (1) through (4) below, that the alien's identity is sufficiently established, the alien poses neither a flight risk nor a danger to the community, and no additional factors weigh against release of the alien.

1) *Identity.*

a) Although many individuals who arrive in the United States fleeing persecution or torture may understandably lack valid identity documentation, asylum-related fraud is of genuine concern to ICE, and DRO must be satisfied that an alien is who he or she claims to be before releasing the alien from custody.

b) When considering parole requests by an arriving alien found to have a credible fear, Field Office personnel must review all relevant documentation offered by the alien, as well as any other information available about the alien, to determine whether the alien can reasonably establish his or her identity.

c) If an alien lacks valid government-issued documents that support his or her assertion of identity, Field Office personnel should ask whether the alien can obtain government-issued documentation of identity.

d) If the alien cannot reasonably provide valid government-issued evidence of identity (including because the alien reasonably does not wish to alert that government to his or her whereabouts), the alien can provide for consideration sworn affidavits from third

parties. However, third-party affiants must include copies of valid, government issued photo-identification documents and fully establish their own identities and addresses.

e) If government-issued documentation of identity or third-party affidavits from reliable affiants are either not available or insufficient to establish the alien's identity on their own, Field Office personnel should explore whether the alien is otherwise able to establish his or her identity through credible statements such that there are no substantial reasons to doubt the alien's identity.

2) *Flight Risk.*

a) In order to be considered for release, an alien determined to have a credible fear of persecution or torture must present sufficient evidence demonstrating his or her likelihood of appearing when required.

b) Factors appropriate for consideration in determining whether an alien has made the required showing include, but are not limited to, community and family ties, employment history, manner of entry and length of residence in the United States, stability of residence in the United States, record of appearance for prior court hearings

and compliance with past reporting requirements, prior immigration and criminal history, ability to post bond, property ownership, and possible relief or protection from removal available to the alien.

c) Field Office personnel shall consider whether setting a reasonable bond and/or entering the alien in an alternative-to-detention program would provide reasonable assurances that the alien will appear at all hearings and depart from the United States when required to do so.

d) Officers should exercise their discretion to determine what reasonable assurances, individually or in combination, are warranted on a case-by-case basis to mitigate flight risk. In any event, the alien must be able to provide an address where he or she will be residing and must timely advise DRO of any change of address.

3) *Danger to the Community.*

a) In order for an alien to be considered for parole, Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or to U.S. national security.

b) Information germane to the determination includes, but is not limited to,

evidence of past criminal activity in the United States or abroad, of activity contrary to U.S. national security interests, of other activity giving rise to concerns of public safety or danger to the community (including due to serious mental illness), disciplinary infractions or incident reports, and any criminal or detention history that shows that the alien has harmed or would likely harm himself or herself or others.

c) Any evidence of rehabilitation also should be weighed.

4) *Additional Factors.*

a) Because parole remains an inherently discretionary decision, in some cases there may be exceptional, overriding factors that should be considered in addition to the three factors discussed above. Such factors may include, but are not limited to, serious adverse foreign policy consequences that may result if the alien is released or overriding law enforcement interests.

b) Field Office personnel may consider such additional factors during the parole decision-making process.

8.4. Assigned DRO officers should, where appropriate, request that parole applicants provide any supplementary information that would aid the officers in reaching a decision. The *Record of*

Determination/Parole Determination Worksheet should be annotated to document the request for supplementary information and any response from the detainee.

8.5. After preparing and signing the *Record of Determination/Parole Determination Worksheet*, and in the case of a denial of parole, drafting a written response to the alien, the assigned DRO officer shall forward these materials and the parole request documentation to his or her first-line supervisor for review and concurrence.

8.6. Upon his or her concurrence, the first-line supervisor shall sign the *Record of Determination/Parole Determination Worksheet* where indicated and forward it, along with any related documentation, to the FOD (or, where applicable, the DFOD or AFOD) for final approval.

8.7. The FOD (or, where applicable, the DFOD or AFOD) shall review the parole documentation, consult with the preparing officer and supervisor as necessary, and either grant or deny parole by signing the *Record of Determination/Parole Determination Worksheet* where indicated and, in the case of a denial, signing the written response to the alien.

8.8. Following a final decision by the FOD to deny parole (or, where applicable, the DFOD or AFOD), the Field Office shall provide the written response to the alien or, if represented, to the alien's legal representative, indicating that parole was denied. If parole is granted, the Field Office shall provide the alien with a

date-stamped I-94 Form bearing the following notation: **"Paroled under 8 C.F.R. § 212.5(b). Employment authorization not to be provided on this basis."**

8.9. If an alien makes a written request for redetermination of an earlier decision denying parole, the Field Office may, in its discretion, reinterview the alien or consider the request based solely on documentary material already provided or otherwise of record.

8.10. The supporting documents and a copy of the parole decision sent to the alien (if applicable), the completed *Record of Determination/Parole Determination Worksheet*, and any other documents related to the parole adjudication should be placed in the alien's A-file in a record of proceeding format. In addition, a copy of the *Record of Determination/Parole Determination Worksheet* shall be stored and maintained under the authority of the FOD for use in preparing monthly reports.

8.11. On a monthly basis, FODs shall submit reports to the Assistant Director for Operations, or his or her designee, detailing the number of parole adjudications conducted under this directive within their respective areas of responsibility, the results of those adjudications, and the underlying basis of each Field Office decision whether to grant or deny parole. The Assistant Director for Operations, or his or her designee, in conjunction with appropriate DRO Headquarters components, will analyze this re-

porting and collect individual case information to review in more detail, as warranted. In particular, this analysis will rely on random sampling of all reported cases for in-depth review and will include particular emphasis on cases where parole was not granted because of the presence of additional factors, per paragraph 8.3(4) of this directive. Any significant or recurring deficiencies identified during this monthly analysis should be explained to the affected Field Office, which will take appropriate corrective action.

8.12. At least once every six months, the Assistant Director for Operations, or his or her designee, shall prepare a thorough and objective quality assurance report, examining the rate at which paroled aliens abscond and the Field Offices' parole decision-making, including any noteworthy trends or corrective measures undertaken based upon the monthly quality assurance analysis required by paragraph 8.11 of this directive.

9. **ATTACHMENTS.**

- *Parole Advisal and Scheduling Notification.*
- *Record of Determination/Parole Determination Worksheet.*

10. **NO PRIVATE RIGHTS CREATED.** This directive is an internal policy statement of ICE. It is not intended to, shall not be construed to, may not be relied upon to, and does not create,

any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

Approved:

/s/ JOHN MORTON
JOHN MORTON
Assistant Secretary
U.S. Immigration and Customs Enforcement

Expert Report of Professor Susan B. Long

Rodriguez v. Hayes, No. 07-3239 (C.D. Cal.)

Submitted Pursuant to Federal Rule
of Civil Procedure 26(a)(2)

INTRODUCTION

I submit this report as an expert, and at the request of Petitioners in *Rodriguez v. Hayes*. I am an Associate Professor of Managerial Statistics at the Martin J. Whitman School of Management at Syracuse University and the Co-Director of the Transactional Records Access Clearinghouse ("TRAC"). TRAC is a data research center at Syracuse University that gathers electronic data from internal government data systems, analyzes the data, and then distributes the information along with TRAC's research findings. A more detailed account of my qualifications is attached as Appendix A to this report. I was compensated at a rate of $250 per hour for my services.

Organization of Report

The report provides my research findings on the following questions I was asked to address:

1. **Detention Length.** How long has each class member been detained by Immigration and Customs Enforcement (ICE), and how have detention times varied among class members?

2. **Custody Status.** What—as of April 2012—was the custody status of each class member: No longer in ICE custody? Still in ICE custody?

3. **Court Involvement.** What court proceedings—before the Immigration Court, the Board of

Immigration Appeals, and the Ninth Circuit Court of Appeals— were decided following the individual's detention by ICE? How was this related to the detention times observed?

4. **Relief Applications.** What relief applications were filed with the Immigration Court? How was this related to detention times observed?

5. **Outcome.** What was the eventual outcome of each class member's court proceeding(s)? Did they ultimately win or lose their case? How was success or failure related to detention times observed?

6. **Comparing Outcomes in Other Removal Cases.** How did outcomes for class members compare to typical outcomes in other removal proceeding? Were they more or less successful?

7. **Aggregate Detention Days.** How does average detention time relate to aggregate detention space needed.

Research Methodology

The methodology I used was as follows. First, I compiled information for each class member covering the period from entry into ICE custody through April 2012. This information included each individual's ICE custody history, the details of any court proceedings following the individual's entry into ICE custody, the outcome of these court proceedings (or whether they were still pending), and whether deportation of the individual had occurred.

Next, for each class member I ordered these actions by calendar dates so I could examine in more detail the

chronology of events that had taken place. Using this date chronology I identified what the nature of the final court outcome had been (or whether proceedings were still pending), how long the individual had been detained (or remained in custody), and whether the individual had ultimately won their court case or had been ordered removed.

Finally, I prepared a series of tables that summarized the findings of my analysis, and prepared this report describing these findings.

Data Sources Used

The following data sources were obtained and used in my analysis:

Detention and Deportation. The official records on detention and deportation on each class member were furnished by the Immigration and Customs Enforcement (ICE). This data, obtained as part of this litigation and furnished to me, was provided as a spreadsheet data table. Each of the columns of the table contained various items of information about each class member. The data also identified which class member each piece of information was associated with by the individual's alien number and name.[1] Among

[1] I received three versions of this file. Two versions ["ICE-EDI-001" and "ICE-EDI-002"] were identical, except names had been originally redacted on the first. These indicate that the data file had been prepared on April 20, 2011 (using a data extract from ICE's "EID" database prepared on April 18, 2011). The remaining file ["ICE-EDI-009"] was prepared a year later, according to source information provided with the file, and contained additional updated information from a data extract from ICE's "EID" database prepared on April 28, 2012.

the fields of information recorded on each class member were the following items:

- date individual entered ICE custody
- date(s) individual had been released or left ICE custody
- for those individuals who had been deported, the departure date when he or she had left the United States

The data indicated that some individuals remained in ICE custody. Also, some individuals had more than one record. This occurred if that individual had entered and been released from ICE custody and was subsequently taken back into ICE custody—for example, when processed for final deportation.

Court Proceedings Involving Class Members. Official records were also obtained for any court proceedings that took place after individuals were placed in ICE custody. These include records from the Immigration Court, the Board of Immigration Appeals (BIA) and the Ninth Circuit Court of Appeals.

These court records were obtained as follows. (1) The Executive Office for Immigration Review (EOIR) furnished official extracts of case-by-case data on Immigration Court and BIA proceedings involving each class member. These files were produced as part of court proceedings in this case and furnished to me. These files contained each individual's alien number and name along with specific details on each Immigration Court and BIA proceeding related to that

person.[2] (2) Data on Ninth Circuit appeals were obtained directly by me from the Ninth Circuit using that court's Public Access to Court Electronic Records (PACER) system. Additional information was provided to me by Petitioners' attorneys compiled from the court records on the specific Ninth Circuit appeals I identified as involving class members.[3]

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[2] Similar to the ICE extracts, EIOR prepared multiple versions of the extract from its CASE database. I used the final version ["EOIR-EDI-006"] which contained the most complete set of records current through April 2012. This version contained additional details on applications for relief that had been originally redacted from earlier versions. In cross-checking the chronology of court proceedings I also used an extract EOIR had prepared for the Transactional records Access Clearinghouse (TRAC) at Syracuse University where I serve as the co-director. The extract EOIR prepared for TRAC contained—in addition to the date fields provided in this case—one additional date field recording when the case began. This was the date the NTA was filed. I used this additional date as a cross-check when confirming the correctness of the date chronology I prepared. Apart from this, the added date field played no role in my analysis.

[3] Using PACER, on September 4, 2012 I downloaded a list of all appeals from BIA court cases received by the Ninth Circuit since December 1, 2007. This data file contained both the Ninth Circuit docket number and the specific BIA docket number recorded on each case, along with the case title, the date the appeal was filed and the last docket entry date for that case. To identify which of these appeals involved class members, I matched the EOIR records on BIA cases against the Ninth Circuit's records to identify each relevant case as follows. Both sets of records contained fields recording the BIA docket number for each case as well as the associated Ninth Circuit docket number. (The BIA uses the individual's alien number as its docket number.) Using the BIA docket number from each Ninth Circuit case, I matched it with the BIA docket number—that is, the alien number—recorded for each BIA case in the EOIR files to identify the relevant Ninth Circuit

Among the fields of information recorded on each class member from these court records were the following:

Immigration Court Proceedings:

- the date the Immigration Court case ("proceeding") began
- the type of proceeding involved—removal, deportation, etc.[4]
- the date the Immigration Court case ("proceeding") was completed
- the location of the court assigned the case and the hearing location

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appeals that concerned class members. In addition, I also used the Court of Appeals docket numbers that were recorded in the EOIR files on BIA cases and matched these numbers against the Ninth Circuit docket numbers recorded in the listing of cases I had downloaded using PACER from the Ninth Circuit. This resulted in a list of Ninth Circuit appeals that matched the EOIR files covering class members. On each of these matched cases, I provided the information I downloaded from PACER to Petitioners' attorneys. After reading the court files on each of these cases, they added an entry to this listing indicating whether the Ninth Circuit case had concluded (yes or no), and if it had concluded, the date the mandate had issued. I then added these two additional fields of information to the original data I had downloaded. I then compared the filing and closure dates to the date the class member entered ICE custody. This identified 197 class members that had one or more Ninth Circuit appeals handled subsequent to their entry into ICE custody.

[4] Almost all proceedings for class members were removal proceedings. In this report I use the term "removal" in a general sense to cover all proceedings, even though a few involved other types of proceedings.

- the date each application for relief was filed with the Immigration Court
- the type of relief applied for
- the date each relief application was decided by the court
- the Immigration Court judge's decision on each relief application
- the Immigration Court Judge's decision on the case

Board of Immigration Appeals Proceedings:

- the type of appeal (for example, case appeal, motion to reopen case, remand from court of appeals, etc.)
- the party that filed the appeal
- the date the appeal was filed
- the date the BIA decided the case
- the BIA decision on the appeal

Ninth Circuit Court of Appeal Proceedings:

- the date the appeal was filed
- whether the appeal was closed or was still pending
- when closed, the date the mandate was issued

This information, after it had been combined, allowed me to trace the chronology of court proceedings that had taken place involving each class member.

Research Results

In the following sections, the results from my analysis are provided. There were exactly 1,000 class members.[5] The body of this report covers these 1,000 individuals. I was also asked by Petitioners' attorneys to prepare a parallel set of tables containing key results that pertained to each of two subclasses: the section 236(c) and section 235 subclasses. The lists for each of those class members were provided to me by Petitioners' attorneys. These separate table sets are found in Appendix B and C to this report.

Questions 1 and 2: Detention Times and Status. ***How long have class members spent detained in ICE custody and how many were still detained?***

Using the data provided from ICE records I calculated the number of days that each class member had remained in ICE custody as of April 28, 2012. I also determined their custody status as of that date. Individuals were divided into two categories—those no longer in ICE custody, and those still in ICE custody.

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[5] I received data concerning 1,026 individuals. The information recorded in the files I received indicated that two of these individuals had been detained for less than 180 days and therefore did not qualify for inclusion in the class. Petitioners' attorneys provided me a list of 24 additional individuals from the original list whom they instructed me to exclude because—based upon the attorneys' analysis of the data provided—those individuals also did not meet the qualifications required for class membership. Those individuals had no active proceedings at the administrative or judicial levels during or immediately prior to their detentions, and therefore appeared to have been detained without any pending case. After these two groups (2+24=26) of individuals were removed, this left the set of exactly 1,000 individuals on which my results are based.

The monitoring period covered by my research was only able to follow cases through April 28, 2012 because that was the latest date in the detention records ICE provided on class members. As shown in Table 1, this monitoring period—from entry into ICE custody through April 2012—was sufficient to follow the entire detention period for ninety-five percent of the class members (946 individuals). For these individuals detention times ranged from 180 days—the minimum required to qualify as a class member—up through 1,310 days. See Table 2.

Table 1

Number of Cases by Detention Category*

Detention Category	Number	Percent
No longer detained	946	95%
Still detained	54	5%
All cases	1,000	100%

* As of April 28, 2012

For the remaining five percent (54 individuals) of the class members the monitoring period was insufficient to capture their entire detention period. This was because these individuals were still in ICE custody at the point the records available to me ended. The number of detention days listed for these individuals and used in my analysis *under-estimates* their eventual detention period since it only reflects the number of days they had been detained up to April 28, 2012. Even these under-estimated detention times as shown in

Table 2 were still very long, ranging from 558 days to 1,585 days.

Table 2

Average Days of Detention by Detention Category

	Detention Days		
Detention Category	**Average**	**Lowest**	**Highest**
No longer detained	381	180	1,310
Still detained	805	558	1,585
All cases	404	180	1,585

Overall, and recognizing that the detention figures presented throughout this report will for this reason underestimate actual detention times for this group of class members, the average number of days spent in ICE detention for all class members was 404 days.

To provide a more detailed picture of the experience of class members, Table 3 summarizes how many class members had been detained for varying periods of time. For example, more than three out of four individuals (78%) were detained eight months or longer, and nearly half (47%) were detained 12 months or longer. Over one in five (21%) were detained for 18 months or longer periods.

Table 3

Cases by Detention Period

Detention Period*	Number	Percent
Detained 6 months or more	1,000	100%
Detained 7 months or more	885	89%
Detained 8 months or more	781	78%
Detained 9 months or more	686	69%
Detained 10 months or more	591	59%
Detained 11 months or more	527	53%
Detained 12 months or more.	469	47%
Detained 13 months or more	405	41%
Detained 14 months or more	353	35%
Detained 15 months or more	309	31%
Detained 16 months or more	273	27%
Detained 17 months or more	238	24%
Detained 18 months or more	205	21%
Detained 24 months or more**	86	9%

* Month (30 days).

** This number is likely to be a significant under-estimate because it ignores detention days after April 28, 2012 of the class members who were still detained.

It was not possible to provide an accurate percentage for the proportion of class members detained 24 months or more. This is because while we know the detention period up through at least 18 months for all

class members, we do not know it for all class members beyond that point. Monitoring periods varied by individual. As of April 2012 almost one out of every ten individuals (9%) had been detained for 24 months or longer. However, this proportion is likely to rise when the detention length for each of the 54 individuals who were still detained last April is followed until their custody is at an end.

Table 4 presents the odds of continued detention for individuals already detained for seven months, eight months, nine months, and so forth. These figures are calculated from the numbers shown in Table 3. And as explained, the various odds of continued detention shown for 24 months are under-estimated since they are likely to rise once the complete detention length for all class members is at an end.

Table 4

Odds of Continued Detention

Those detained 7 months:		
	still detained at 12 months	53%
	still detained at 18 months	23%
	still detained at 24 months	10%
Those detained 8 months:		
	still detained at 12 months	60%
	still detained at 18 months	26%
	still detained at 24 months	11%
Those detained 9 months:		
	still detained at 12 months	68%
	still detained at 18 months	30%
	still detained at 24 months	13%
Those detained 10 months:		
	still detained at 12 months	79%
	still detained at 18 months	35%
	still detained at 24 months	15%
Those detained 11 months:		
	still detained at 12 months	89%
	still detained at 18 months	39%
	still detained at 24 months	16%
Those detained 12 months:		
	still detained at 12 months	100%
	still detained at 18 months	44%
	still detained at 24 months	18%

Question 3: Court Proceedings. ***What court proceedings occurred following the individual's detention by ICE? How was this related to the detention times observed?***

Results from the official court records I compiled on court proceedings are summarized in Table 5. These records indicated that Immigration Court proceedings were conducted after ICE placed the individual into custody in almost every case (94%).

In over one out of three cases (36%) an appeal to the Board of Immigration Appeals ("BIA") was filed. (Some of these were filed by ICE appealing an immigration judge's (IJ) decision). Finally, in one out of five cases (20%), an appeal was taken to the Ninth Circuit of Appeals. See Table 5.

Table 5

Court Involvement in Case

Type of Proceedings Involved	Number	Percent
All cases	1,000	100%
Immigration Court proceeding(s)	943	94%
BIA Court proceeding(s)	356	36%
9th Circuit Court proceeding(s)	197	20%

Not unexpectedly, when a case was appealed individuals experienced longer detention times. As shown in Table 6, for cases simply involving Immigration Court proceedings, the average detention time was 330 days. However, the average detention time increased by about a third—from 330 days to 448 days—for cases appealed to the BIA. For cases that were then appealed to the Ninth Circuit, detention times more than

doubled—increasing from 330 days on average to 667 days.

Table 6

Court Involvement and Detention Time

Type of Proceedings Involved	Average Days
Only Immigration Court (IJ) proceeding(s)	330
BIA and Immigration Court proceedings	448
9th Circuit, BIA, and IJ proceedings	667
All cases	404

Question 4: Relief Applications. ***What relief applications were filed with the Immigration Court? How was this related to detention times observed?***

There were 713 class members who filed application(s) for relief with the Immigration Court. This meant that in seven out of ten cases (71%) relief was sought. As shown in Table 7, relief was granted by the immigration judge in more than one out of three of these cases—251 out of 713, or 35 percent.

The judge's decision to grant relief was contested in some of these 251 cases. However, as of April 2012, the grant of relief had become final for over nine out of ten (91%) of these cases—229 out of 251. Of the 22 remaining cases, the grants were reversed in ten cases and the appeals remain pending in 12 cases. This data would not include any individuals denied relief by the immigration judge who then obtain it on appeal at either the BIA or the Ninth Circuit.

Table 7

Applications for Relief

	Comparison Group	Filing for Relief Number	Percent
Number and percent who filed relief application(s)	1,000	713	71%
Number and percent where relief granted by IJ	713	251	35%
Number and percent where relief granted is final outcome*	251	229	91%

* The final outcome is still pending on 12 cases on which relief was granted initially by the Immigration Judge, and in 10 cases the initial decision was later overturned or the individual left the country for other reasons.

Table 8 presents an overview of relief applications by type. Cancellation of removal under Section 240A(a) of the Immigration and Nationality Act ["Form EOIR-42A"] was a common form of relief sought by class members. A total of 256 class members—one in four (26%)—filed applications for relief under this provision. An additional 28 class members, or less than three percent, filed applications only for withholding of removal (WOR) or withholding under the Convention Against Torture (WCAT). The remaining 429 of the class members who sought relief (43%) filed various other types of relief applications.

Table 8

Relief Applications Filed by Type

	Number	Percent
Number of cases	1,000	100%
EOIR-42A applications filed	256	26%
Only applying for WOR/WCAT	28	3%
Other types of applications	429	43%
Total filing relief applications	713	71%

Table 9 summarizes the IJ's decision on relief applications under 240A(a) for cancellation of removal. Exactly half of these applications—128 out of 256—were granted this relief. See Table 9.

Table 9

Application for Cancellation of Removal under 240A(a)

Number of EOIR-42A applications filed	256
Number of these granted by IJ	128
Percent granted	50%

As we saw in Table 8 there were relatively few individuals who only sought relief under WOR or WCAT. Table 10 presents a picture of relief applications that excludes those who only sought, or were only awarded relief, under WOR or WCAT. Not surprisingly, given their relatively small numbers, the same general picture emerges as we saw earlier when we discussed Table 7. Now a total of 685 class members filed relief applications (excluding WOR/WCAT) or more than two out of three (69%). Of those filing applications roughly one third—32 percent—were granted.

Table 10

Applications for Relief
(Excluding Withholding of Removal and WCAT)*

	Comparison Group	Filing for Relief	
		Number	Percent
Number and percent who filed relief application(s)	1,000	685	69%
Number and percent where relief granted by IJ	685	222	32%
Number and percent where relief granted is final outcome**	222	216	97%

* Counts exclude cases where the only application filed, or the only application granted, was for Withholding of Removal or withholding under the Convention Against Torture

** The final outcome is still pending on 4 cases on which relief was granted initially by the Immigration Judge, and in 2 cases the initial decision was later overturned

When relief applications were involved, detention times increased. Individuals who did not request relief had detention times which averaged 360 days, while those requesting relief were detained an average of 421 days, or 61 days longer. See Table 11.

Table 11

Average Detention Days
If Relief Application Filed

Relief Applications	Average Days
No application for relief filed	360
Application for relief filed	421
All cases	404

Table 12 subdivides these relief comparisons by the combination of court proceedings involved. Not only were detention times higher for those requesting relief at the Immigration Court stage, but they were substantially higher at each subsequent court stage.

For example, in cases with only Immigration Court proceedings the individual spent on average 281 days in detention; when applications for relief were filed the average detention time increased to 346 days. For those cases that went on to the BIA, the differential grew to 112 days (from 361 days to 473 days).

Table 12

Detention Time by Proceedings and Relief

Type of Proceedings Involved	Average Detention Days		
	Applied for Relief		All Cases
	No	Yes	
Only Immigration Court (IJ) proceeding(s)	281	346	330
BIA and Immigration Court proceedings	361	473	448
9th Circuit, BIA, and IJ proceedings*	623	681	667
All cases	362	421	404

* Because the majority of individuals are still detained in the large number of cases (72) that are still pending when all three court levels handled the case, these figures underestimate what detention times will eventually reach.

Question 5: Outcome. ***What was the eventual outcome of each class member's court proceeding(s)? Did they ultimately win or lose their case? How was success or failure related to detention times observed?***

The outcome of cases that had been resolved as of April 2012 are shown in Table 13. One in six cases (16%) was still pending as of that date so their outcome was not known. A total of 263 class members—more than one out of every four (26%)—had already won their case.

Less than half of the class members had been removed (44%), and an additional five percent were granted voluntary departures. The remaining nine percent were awaiting deportation after a final removal order had been entered.

Table 13

Outcome of Case*

Outcome	Number	Percent
Won case	263	26%
Case still pending	160	16%
Deportation ordered (not departed)	87	9%
Voluntary departure	46	5%
Removal	444	44%
All cases	1,000	100%

* As of April 28, 2012

Table 14 further subdivides those class members who won their case by the type of decision. Most (87%) were granted relief, while in the remaining 13 percent of the cases the proceedings were terminated.

Table 14

Basis for Winning Case

	Number	Percent
Individual won case	263	100%
Relief granted	229	87%
Case terminated	34	13%

Detention times are shown by outcome in Table 15. Class members who won spent on average 342 days in detention. But detention times ranged as high as 848 days for this group. The longest detention times were experienced for those whose cases were still pending. They had spent, as of April 28, 2012, an average of 545 days in ICE detention, and detention times ranged as high as 1,585 days. The voluntary departure group was detained on average 305 days—the shortest period of time among outcome categories.

Table 15

Average Days of Detention by Outcome*

	Detention Days	
Outcome	Average	Highest
Won case	342	848
Case still pending	545	1,585
Deportation ordered (not departed)	410	1,310
Voluntary departure	305	561
Removal	398	1,133
All cases	404	1,585

* As of April 28, 2012

Those who won their case spent longer periods of time detained where additional proceedings before the BIA or Ninth Circuit Court of Appeals were involved. For example, as shown in Table 16, individuals who won after only Immigration Court proceedings spent on average 320 days in detention. However, those who prevailed only after both BIA and Immigration Court proceedings spent about 60 percent longer on average in detention—509 days as compared to 320 days.

Table 16

Detention Time for Class Members Who Won Their Case
Level of Court Proceedings Reached

Type of Proceedings Involved	Average Days
Won case	342
Won with only Immigration Court (IJ) proceeding(s)	320
Won after BIA and Immigration Court proceedings	509
Won after 9th Circuit, BIA, and IJ proceedings	*428

* Because of the large number of cases (72) still pending involving Ninth Circuit appeals relative to the number this figure is based upon, this figure is likely to significantly under-estimate what detention length will turn out to be for those who eventually win their appeal.

Early results from those who prevailed only after winning a Ninth Circuit appeal similarly show higher detention times, averaging 428 days. However, because of the large number of cases (72) still pending involving Ninth Circuit appeals relative to the number on which this figure is based, this number is likely to significantly under-estimate what the length of detention will turn out to be for those who eventually win their appeal, because the majority of these individuals

are still detained. The average number of detention days as of April 28, 2012 for those still detained in these pending cases had already reached 851 days.

Question 6: Comparing Outcomes in Other Removal Cases. ***How did outcomes for class members compare to typical outcomes in other removal proceedings? Were they more or less successful?***

I next compared class member outcomes with outcomes in removal proceedings more generally. For these comparisons I used figures for the FY 2010-2012 time period published by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University. As noted earlier, I am very familiar with this data as I am the co-director of the Center and direct the preparation of this statistical series.[6]

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[6] Each month, the Executive Office for Immigration Review (EOIR) provides TRAC with a copy of its official court records in the form of an extract from its CASE database. This is the same type of case-by-case data EOIR furnished regarding class members in this litigation, which I used for the other sections in this report. The data provided to TRAC covers all Immigration Court proceedings in the country and is furnished without any identifiers to preserve the privacy of the individuals appearing in these removal proceedings. TRAC uses this data to publish regular reports on Immigration Court proceedings available on its website at: http:// trac.syr.edu/immigration. TRAC also provides a web interface (http://trac.syr.edu/immigration/tools) to allow the public to query the database TRAC has compiled from these court records providing information on new proceedings filed, cases completed, court outcomes, the court's backlog, and wait and completion times. Results reported here are taken directly from this source using data current as of August 31, 2012 and covers all removal orders, voluntary departure orders, termination decisions and decisions granting relief.

Table 17 presents a side-by-side comparison of outcomes in these removal proceedings. For these comparisons, I focused on the outcomes for the 840 class members on which a decision had been reached, excluding those on which the matter was still pending before the courts. As noted earlier, 263 of these class members had won their case. This represents 31 percent of the cases decided to date. Of these 263 who had won, 229 class members had been granted relief, or 27 percent of all decided cases. See figures in column labeled "Class Members" in Table 17.

Table 17

Comparing Outcomes in Removal Proceedings

	United States (majority not detained)*	Mira Loma Detention Facility*	Class Members
Removal proceedings decided	608,129	9,355	840
Number won by individual**	163,907	669	263
Number relief granted	90,865	514	229
Percent won by individual	27%	7%	31%
Percent granted relief	15%	5%	27%

* Immigration Court records current as of August 31, 2012 for the period FY 2010 - 2012. According to the latest published EOIR figures, for the U.S. non-detained cases made up 58% (FY 2011) and 56% (FY 2010) of proceedings, while Mira Loma hearings are just for detainees

** Includes cases granting relief and terminated.

Nationally during this time period there were 608,129 removal proceedings decided by the Immigration Court. The majority of these proceedings involved non-detained cases. Individuals won just over one out of every four (27%) of these cases. Relief was granted in 15 percent of the cases, while proceedings were terminated in the remaining 12 percent. See column labeled "United States" in Table 17.

Comparing the results for the U.S. with those for our class members, we see that class members were more successful. While in the U.S. 27 percent won the decision in their case, for class members wins were higher—31 percent. Relief in particular was granted at over twice the rate that occurred in removal proceedings nationally. Because, in general, Immigration Court statistics show that non-detained individuals have far higher success rates than individuals who are detained, the fact that the reverse is true here is noteworthy.

I next compared the outcomes for class members to those in Immigration Court removal hearings conducted at the Mira Loma Detention Facility. Unlike the hearings reflected in the national statistics, the hearings in Mira Loma all involved only individuals detained in ICE custody. This particular location was chosen because the majority of class members had their hearings at this specific location, and because it allows a comparison to a group of exclusively detained cases.

As shown in Table 17 there were 9,355 removal proceedings decided at the Mira Loma Detention Facility during this time period. Of these, 669 individuals won their case, including 514 individuals who were granted

relief. This means that only 7 percent of Mira Loma detainees won their case. Five percent were granted relief, while the remaining 2 percent had their proceedings terminated. See column labeled "Mira Loma Detention Facility" in Table 17.

The comparison of Mira Loma detainees to the class members is stark. Class members were successful four times more often—31% versus 7%—than Mira Loma detainees were on the whole. And class members were awarded relief five times more often—27% versus 5%—than Mira Loma detainees overall were.

Question 7: Aggregate Detention Days. ***How does average detention time relate to aggregate detention space needed?***

Thus far we have examined detention from the perspective of the individual who is being detained. The same data, however, can be examined from the perspective of the agency responsible for providing detention space and for paying to house these individuals while they are detained.

How many detention beds in aggregate were needed to cover the detention needs for one year for class members once individuals qualified as class members—that is, those who had already been detained for 180 days?

The answer to this question is shown in Table 18. The first row shows the aggregate number of days class members spent for the initial 180 days. The second row shows the aggregate number of days class members remained detained during the following one year period.

Table 18

Aggregate Detention Days

Time Period	Class Members
First 180 days	180,000
Next year (365 days)	184,067
Subtotal	364,067
More than 18 months	(insufficient data)*
Total detention days	(insufficient data)*

* monitoring period varied by class member but was designed to ensure information for 180 days plus one year (365 days) for all individuals; because monitoring period then ended one cannot derive valid numbers for subsequent time periods. The total aggregate days for class members as of April 2012 had reached 403,660.

All individuals were, by virtue of being class members, detained for the entire initial 180 days period. As shown in Table 18, this meant that, in aggregate, facilities with capacity to house individuals for 180,000 detention days were needed to house them. (This represents 1,000 class members x 180 days = 180,000 detention days.)

For the next year the facilities required to house class members totaled 184,067 detention days. Because some class members were released from detention or deported during this year, the figure shown in Table 18 was calculated by examining the detention days each individual spent during that following 365 days period and then summed to derive the total aggregate days of 184,067.

This figure excludes the aggregate detention days needed for the first 180 days of their detention. When this is added, the aggregate detention days for the first 18 months—180 initial days plus the subsequent year—were 364,067. See Table 18.

These figures, however only include detention through the first year (plus 180 days). However, from earlier Table 3, we know that more than one in five persons (21%) were detained for periods of 18 months or more. In fact, one individual was detained for 1,585 days (over four years.)

Unfortunately, the data available are insufficient to calculate what the aggregate detention days would be after one year. While the monitoring period varied somewhat by class member, it was only designed to ensure information for 180 days plus one year (365 days) for all individuals—the period covered by the figures shown. Thus the 364,067 days figure presented in Table 18 significantly under-estimates what the aggregate number of detention days will eventually total for class members since it omits all detention time after 18 months.

The total aggregate days for class members as of April 2012 had already reached 403,660 days but, for the reasons explained above, this figure does not fully capture what the total will become since it reflects the number of days class members had been detained only up to April 28, 2012.

Subclass Data

In addition to the class-wide research, I also analyzed data specific to two of the subclasses: the section 236(c) and section 235 subclasses. Because I am not

familiar with the operation of the detention statutes and subclasses in this case, I relied on Petitioners' attorneys to provide me with a list of individuals who qualified as subclass members, which I then used to compile the data specific to each subclass.

With respect to the section 236(c) subclass, I was provided with a list of 460 subclass members. I cannot speak to the accuracy of this list. Information about the 236(c) subclass is contained in Tables 19-26 in Appendix B.

With respect to the section 235 subclass, I was provided with a list of 68 subclass members. I understand that Petitioners' attorneys believe that this list is a sample of the section 235 subclass drawn from those for whom Respondents produced parole worksheets. According to Petitioners' attorneys, the overall subclass size may be larger, but the sample is representative of the subclass as a whole. I cannot speak to the accuracy of those claims. Information about the section 235 subclass is contained in Tables 27-31 in Appendix C.

* * * * *

Appendix B: Results for Section 236(c) Subclass

There were a total of 460 individuals in the Section 236(c) subclass. Table 19 shows that 5 percent of these individuals were still detained as of April 2012 when data coverage ended.

Table 19

Number of Cases by Detention Category: Section 236(c) Subclass*

Detention Category	Number	Percent
No longer detained	437	95%
Still detained	23	5%
All cases	460	100%

* As of April 28, 2012

As of last April, Individuals had been detained on average for 427 days. Detention times, however, ranged as high as 1,585 days. See Table 20.

Table 20

Average Days of Detention by Detention Category: Section 236(c) Subclass*

	Detention Days		
Detention Category	Average	Lowest	Highest
No longer detained	406	180	1,310
Still detained	827	558	1,585
All cases	427	180	1,585

* As of April 28, 2012

As shown in Table 21, about three out of four (73%) applied for relief, and more than 40 percent of the individuals who applied were granted relief by the immigration judge.

Table 21

Applications for Relief:
Section 236(c) Subclass

	Comparison Group	Filing for Relief	
		Number	Percent
Number and percent who filed relief application(s)	460	338	73%
Number and percent where relief granted by IJ	338	137	41%
Number and percent where relief granted is final outcome	137	130	95%

Table 22 gives figures on the types of relief for which 236(c) class members applied. About half of class members (49%) filed an EOIR-42A application. Just a few (3%) applied only for WOR/WCAT.

Table 22

Relief Applications Filed by Type:
Section 236(c) Subclass

	Number	Percent
Number of cases	460	100%
EOIR-42A applications filed	225	49%
Only applying for WOR/WCAT	14	3%
Other types of applications	99	22%
Total filing relief applications	338	73%

An analysis was also conducted excluding individuals who had only applied for relief, or had only been granted relief, under WOR/WCAT. These results are shown in Table 23. Because so few individuals were affected by this exclusion, results shown in Table 23 generally show a very similar pattern to what we saw earlier in Table 21 covering all applications for relief.

Table 23

Applications for Relief: Section 236(c) Subclass (Excluding Withholding of Removal and WCAT)*

	Comparison Group	Filing for Relief Number	Filing for Relief Percent
Number and percent who filed relief application(s)	460	324	70%
Number and percent where relief granted by IJ	324	126	39%
Number and percent where relief granted is final outcome	126	124	98%

* Counts exclude cases where the only application filed, or the only application granted, was for Withholding of Removal or withholding under the Convention Against Torture.

Just as for the class as a whole, applying for relief increased the average detention time a person was held in ICE custody under 236(c). The average detention days for class members who did and did not apply for relief are shown in Table 24.

Table 24

Detention Days If Relief Application Filed: Section 236(c) Subclass

Relief Applications	Average Days
No application for relief filed	383
Application for relief filed	443
All cases	427

One in three subclass members (33%) won their case, while for an additional 11 percent the case was still pending at the end of April 2012. See Table 25.

Table 25

Outcome of Case:
Section 236(c) Subclass*

Outcome	Number	Percent
Won case	150	33%
Case still pending	51	11%
Deportation ordered (not departed)	36	8%
Voluntary departure	5	1%
Removal	218	47%
All cases	460	100%

* As of April 28, 2012

Of the 150 subclass members who had won their case, 130 were granted relief while the proceeding(s) for the remaining 20 had been terminated. See Table 26.

Table 26

Basis for Winning Case:
Section 236(c) Subclass

	Number	Percent
Individual won case	150	100%
Relief granted	130	87%
Case terminated	20	13%

Appendix C: Tables for Section 235 Subclass

There were a total of 68 individuals identified by Petitioners' counsel for purposes of my analysis of the Section 235 subclass. It is my understanding that this likely does not include all individuals in that class. No subclass member was still in custody at the end of the monitoring period. Table 27 shows that on average subclass members spent 346 days in detention, although detention time ranged as high as 831 days.

Table 27

Detention Days:
Section 235 Subclass*

	Value
Number of cases	68
Average detention days	346
Lowest detention days	180
Highest detention days	831

* All are no longer detained (as of April 28, 2012).

Almost all (97%) of Section 235 subclass members filed applications for relief. The immigration judge granted them relief almost two-thirds of the time (64%). See Table 28.

Table 28

Applications for Relief: Section 235 Subclass

	Comparison Group	Filing for Relief	
		Number	Percent
Number and percent who filed relief application(s)	68	66	97%
Number and percent where relief granted by IJ	66	42	64%
Number and percent where relief granted is final outcome	42	41	98%

The types of relief applied for are shown in Table 29. Only a single individual applied for relief only under WOR/WCAT.

Table 29

Relief Applications Filed by Type:
Section 235 Subclass

	Number	Percent
Number of cases	68	100%
EOIR-42A applications filed	0	0%
Only applying for WOR/WCAT	1	1%
Other types of applications	65	96%
Total filing relief applications	66	97%

Table 30 presents results on relief applications after those who only sought or were granted relief under WOR/WCAT are excluded. Results shown in Table 30 below are virtually unchanged from what we saw earlier in Table 28.

Table 30

Applications for Relief: Section 235 Subclass
(Excluding Withholding of Removal and WCAT)*

	Comparison Group	Filing for Relief	
		Number	Percent
Number and percent who filed relief application(s)	68	65	96%
Number and percent where relief granted by IJ	65	41	63%
Number and percent where relief granted is final outcome	41	41	100%

* Counts exclude cases where the only application filed, or the only application granted, was for Withholding of Removal or withholding under the Convention Against Torture

Six out of ten individuals (60%) won their case. Two cases were still pending at the end of April 2012. Case outcomes are shown in Table 31.

Table 31

Outcome of Case:
Section 235 Subclass*

Outcome	Number	Percent
Won case	41	60%
Case still pending	2	3%
Deportation ordered (not departed)	18	26%
Voluntary departure	0	0%
Removal	7	10%
All cases	68	100%

* As of April 28, 2012

Rebuttal Expert Report of Professor Susan B. Long

Rodriguez v. Hayes, No. 07-3239 (C.D. Cal.)

Submitted Pursuant to Federal Rule
of Civil Procedure 26(a)(2)

Introduction

I submit this rebuttal report as an expert, and at the request of Petitioners in *Rodriguez v. Hayes*. This report was prepared to respond to two issues raised in the government's Expert Statistical Report of October 12, 2012, authored by Dr. Chester I. Palmer. The two issues covered in this report are:

Issue One: Was the data on "adjournments" on which Dr. Palmer based his analyses reliable?

Issue Two: If I had used the in-period sampling approach suggested by Dr. Palmer in my original report, would the results reported in my original report have materially changed?

Summary of Findings

- Issue One: The data on adjournments on which Dr. Palmer based his analyses is not reliable.

I assessed the reliability of the adjournment data by examining the internal consistency between adjournments recorded in the "schedule" table and adjournments recorded in the "actions" table of the EOIR database. There are over 900 adjournments recorded (almost 20% of the total) in the "actions" table that have no corresponding adjournment recorded in the "schedule" table within six days of the date on which the "action" allegedly occurred. Conversely, there

are well over 500 adjournments recorded in the "schedule" table with no matching adjournment in the "actions" table (over 10% of the total). Upon examination, there was no discernible pattern indicating that this inconsistency affects only particular types of adjournments. In fact, it affects many of the adjournments that Dr. Palmer's report classified as "alien-caused delays." The extremely high rate of inconsistency in the adjournments data render it unreliable as an information source for the analysis that Dr. Palmer undertook.

These findings are consistent with my prior experience with the "schedule" table. I attempted to rely on the "schedule" table for a study I conducted in 2009 and, based on my review of the data and conversations with immigration judges at that time, found that it was not reliable for the purpose for which I sought to use it.

- Issue Two: Use of the in-period sampling approach suggested by Dr. Palmer does not materially change the results reported in my original report.

In his report, Dr. Palmer suggested that the population on which my analysis was based was subject to a "selection" bias insofar as some detainees held for longer periods of time have a greater chance of inclusion. Dr. Palmer suggested that it would be more appropriate to use an in-period sample, although that sample would have to be adjusted for censoring bias because the outcome and detention length for some sample members was not known. While my approach was appropriate given the questions I was asked to answer in my report and the available data, I nonetheless carried out the in-period sampling approach sug-

gested by Dr. Palmer to determine if his approach would produce materially different results—that is, *lower* values for detainee success or detention length. I conclude that it would not.

With respect to the outcomes of class members' cases, I found that using an in-period sample produced comparable, although somewhat higher, estimates of class members' success rates than the results from my original report. In-period detainees are likely to have a successful outcome approximately 35% of the time. Consistent with my prior results, an analysis of the in-period sample showed substantially higher success rates for class members compared with results for the U.S. as a whole (where the majority of individuals were not detained), and stark differences as compared with success rates for all detainees at the Mira Loma Detention Facility. Results concerning relief applications for the in-period sample also show that a slightly higher proportion of class members applied for relief, and that they were slightly more successful, than I reported in my original report.

With respect to the detention lengths of class members, it is far more challenging to develop reliable estimates for the in-period sample because a significant number of individuals in that sample were detained as of the time the data was obtained, making it impossible to know how long they will ultimately be detained. To account for this "censoring" bias, I used two different methods to estimate detention length utilizing other available sources of data. However, those methods produced detention time estimates substantially longer than those in my original report. I concluded that because these approaches rely on addi-

tional data to correct for censoring bias, and because they lead to results showing substantially longer detention times than those reflected by my initial report (which analyzed only class members), they are likely not reliable. In the absence of a reliable source of data from which to correct the censoring bias, I employed a "self-balancing" method utilizing the in-period and out-period data to estimate detention lengths. This is the standard method used by statisticians in situations such as this, where two sources of bias operate in opposing directions. This method, which I believe to be the more conservative approach, is equivalent to the analysis in my original report and produces the same results previously reported on detention length. I believe those results are the most accurate available measures of detention length for purposes of determining class members' detention length given the available data.

I. *Issue One: Reliability of EOIR data on "adjournments"*

Dr. Palmer's report contained an analysis of the "adjournments" in class members' cases based on data provided to him by the government. However, the information on which Dr. Palmer based his conclusions is not reliable because there is significant internal inconsistency in the adjournment information in the data. This conclusion is consistent with my prior experience analyzing the source of the adjournment data.

I assessed the reliability of the adjournment data by examining its internal consistency. Because there are multiple sources of information on adjournments in the EOIR Access database that was provided in discovery in this case, one can use the sources to check their

consistency. At least two tables within the EOIR Access database contain information on adjournments: (1) the "schedule" table, on which Dr. Palmer relied for his analysis[1]; and (2) the "actions" table, which contains information regarding "actions" taken in a case, including adjournments. However, the two tables do not contain identical categories of information on adjournments. The "actions" table lists only the date and the fact that an adjournment was taken, and does not contain an "adjournment code" that indicates the reason for the adjournment.

To assess the reliability of adjournment data, I compared the adjournments recorded in the "schedule" and "actions" table for proceedings during the April 2010-April 2012 period.[2] A comparison of the ad-

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[1] As Dr. Palmer explains in his report, he primarily relied on a spreadsheet entitled "AC Delays.xls" that contained "information on the dates of hearings, with codes indicating whether each hearing was adjourned and, if so, whether the adjournment was requested by the alien." It is my understanding that the information on dates of hearings and adjournment codes was derived from the "schedule" table in the EOIR Access database that was produced in discovery in this case.

[2] To provide as accurate gauge of the internal consistency of data in the requisite time period, I focused only on hearings scheduled between April 2010–April 2012 in the "schedule" table, and adjournment entries in the "actions" table that occurred between these two dates. To help ensure that results were insensitive to assumptions concerning how to perform the match, I re-ran my analysis several ways. To look at "match" rates, I began by consolidating records from the schedule table that had multiple records for the same date into a single record. I ran the analysis first on this entire set, and then again on a set which, consistent with Dr. Palmer's analysis, eliminated the entries in the "schedule" table with the adjournment code "99" (defined as "data entry error") and

journment information in the two tables reveals significant inconsistencies in the data. As an initial matter, there were materially different counts of adjournments entries reflected in the "schedule" (4,669) and "actions" tables (5,001). In total, there were 332 (roughly 7%) more adjournments recorded in the "actions" table. This represents a fairly high error rate, even if we assume that the remaining adjournments recorded were consistent (i.e., conducted on the same date)—which, as I explain below, they are not.

An analysis of the dates on which adjournments were recorded reveals even greater inconsistencies in the data. For the 4,669 adjournments recorded in the "schedule" table, only 3,538 (76%) had a corresponding adjournment entered in the "actions" table with an identical date match. However, this does not necessarily indicate error in the remaining adjournments because, for a variety of reasons, it is conceivable that

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also eliminated the entries in the "schedule" table where no adjournment code was entered. This was done because the lack of a reason given could indicate that no adjournment in fact occurred. With respect to the "99" and "blank" adjournment codes, I found that their inclusion or exclusion did not materially affect the "match" rate (in part because there were a small number of "matches" for those entries in the "actions" table). With respect to the records in the "actions" table, I also consolidated any adjournment records on the same date for a given case into a single record when I ran the analysis. Sometimes the adjournment records indicated they had been "Edited" rather than "Added." So I re-ran the analysis again after screening out the "Edited" adjournment records. The "match" rates were comparable under these different methods. For simplicity, I report the "match" rates for my final analysis where I eliminated blank or '99' entries in the adjournment code field and also eliminated "Edited" adjournment entries from the actions table.

an adjournment may be recorded in the "schedule" and "actions" tables on different dates, or recorded as entered on different dates (although this delay could undermine the reliability of the reasons attributed to the adjournments). To account for this possibility, I compared how often the adjournments recorded in the "schedule" and "actions" tables fell within a six day range of each other (that is, plus/minus three days). Although it might be appropriate to select a smaller range to assess error rate, I selected a broad enough range that would account for any reasonable delay in data entry.

Table 32

Comparison of Adjournment Entries in Schedule and Actions Tables*

	Number
Schedule Table: hearings listed with an adjournment reason	4,669
Actions Table: adjournment entries	5,001
Dates matched:	
Adjournment dates the same	3,538
Dates loosely match (within six day range - plus/minus 3 days)	555
No matching date within six-day range of each other:	
Adjournment entry in Actions Table not in Schedules Table	908
Adjournment entry in Schedule Table not in Actions Table	576
Subtotal - not matched	1,484

* Exclude records where adjournment reason blank or code '99' and all actions where adjournment action was "Edited" rather than "Added"

As the above table indicates, there were significant numbers of adjournments in the "schedule" and "actions" table that had no matching date within a six day range. 908 of the adjournment entries (18%) in the "actions" table did not have a match within six days in the "schedule" table. Conversely, 576 of the adjournment entries (12%) in the "schedule" table did not have

a match within six days in the "actions" table. In total, there were 1,484 adjournment entries across the two tables where their dates were not within a six-day range. This is a very high number—especially compared to the total number of original entries in either table—4,669 in the "schedule" table, and 5,001 in the "actions" table.

I next carried out further analyses to see whether there were particular adjournment codes where this "no match" problem occurred. I found that the inconsistencies in the dates for adjournments did not appear to be limited to any one type or class of adjournment. For this analysis, I located the adjournment reasons that had been entered for the case and date for each "no match" record in the "schedule" table. I then analyzed the number and percent of "no match" entries for the adjournment codes. I concluded that, while there was some variability in the "no match" rates, there were "no matches" for all adjournment codes except for a few codes that occurred very infrequently in the "schedule" table.[3]

In particular, I found no discernible pattern in the types of adjournment codes where "no matches" occurred. I looked especially at the adjournment codes that Dr. Palmer's report attributed as "alien request-

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[3] For this analysis I could not consider adjournments that were recorded in the "actions" table but where there was no matching entry in the "schedule" table since the actions table did not contain the adjournment reason code. That is I started with 576 unmatched records. Accordingly this part of my analysis had to ignore the substantially larger number of occasions—908—where the "actions" table contained an adjournment but no match was found in the "schedule" table.

ed" and found a significant "no match" rate for these as well.

These estimates likely underestimate the error rate in the data because my analysis considered only the presence or absence of an adjournment entry. There were other variables included in the "schedule" table—including the "reason" for an adjournment—that could also be sources of error but were not included in this analysis since there was no corresponding adjournment code recorded in the "actions" table with which it could be compared.

In light of the significant inconsistency with the "actions" table, it is my opinion that the adjournment information in the "schedule" table is not sufficiently reliable for the type of analysis that Dr. Palmer attempted to conduct. While there will always be errors in any large data source, when the errors or inconsistencies in a data set become severe, those data fields cannot be relied upon to draw valid statistical conclusions. Although the exact rate of error at which a data field becomes unreliable depends in part on the purpose for which it is used—and even then reasonable minds may differ on the tipping point at which the data is no longer useful—in my judgment, the high rate of inconsistencies between the "schedule" table and the "actions" table renders the "schedule" table unreliable for the analysis undertaken in Dr. Palmer's report.

My conclusion is reinforced by my prior experience working with the "schedule" table data. In 2009, I conducted a study on the workload of immigration judges that relied in part on data provided by EOIR, including data from the case, proceedings, charge,

court applications, and the "schedule" tables. My study also involved interviews of immigration judges. I had originally planned to base a good part of my results on the data in the "schedule" table. However, when I provided immigration judges with copies of the tables for their own schedules and that of their colleagues, the judges I interviewed pointed to numerous inaccuracies in them and advised me that they did not believe the "schedule" table accurately reflected what they knew had taken place. Given this advice, I discontinued my use of the schedule table and did not rely upon it in deriving my results. While it is possible that the data in the "schedule" table has improved since that time, my review of the "schedule" table in this case strongly suggests that numerous problems remain.

II. Issue Two: Use of in-period detainees to measure outcomes and detention length

In his report, Dr. Palmer suggested that it would be more appropriate to use an in-period sample for my analysis because the population on which my analysis was based was subject to a "selection" bias. While my approach was appropriate given the questions I addressed in my report and the available data, I nonetheless carried out the in-period sampling approach suggested by Dr. Palmer to determine if his approach would produce materially different results—that is, lower values. I conclude that it would not.

With respect to the outcome of class members' cases, I found that using an in-period sample produced somewhat higher estimates of class members' success rates than the results in my original report. Consistent with my prior results, an analysis of the in-period

sample showed materially higher success rates for class members compared with results for the U.S. as a whole (where the majority of individuals were not detained) as well as stark differences with success rates for all detainees at the Mira Loma Detention Facility. Results concerning relief applications for the in-period sample show that a slightly higher proportion of class members applied for relief and that they were slightly more successful than I had reported in my original report.

It is far more challenging to develop reliable estimates of detention lengths for the in-period sample because a significant number of individuals in that sample remain detained. To account for this "censoring" bias, I applied two additional standard methods coupled with other available data to estimate the likely detention lengths for those members of the in-period sample who remain detained. Those standard methods produce detention lengths that are distinctively higher than in my initial report—that is, they show substantially longer average detention periods. Because these estimates rely upon additional data to correct for censoring bias that may not be reliable, and because they produce results that are markedly different from (and longer than) those produced in my original report, I ultimately reject them. I believe a more conservative approach is to use the self-balancing method that is commonly employed when both selection bias and censoring bias are present in the data. The self-balancing method is equivalent to the analysis in my original report and produces the same results reported there on detention length.

A. Preliminary Considerations

1. *Using Data About the Universe vs. Only a Sample*

In my initial report, I was asked to provide information on the class members whose information I was given as though they constituted the universe of the relevant population. In this case, an analysis that treats the class members whose information we have as the universe of cases may be preferable to an analysis limited to just a sample of cases selected from that universe, for a number of reasons. First, because *more* individuals are included in the universe, results can usefully examine the outcome for smaller subgroups within the data. Second, the methodology of sampling inherently introduces additional imprecision into the results about the class as a whole. Statisticians refer to this imprecision as "sampling error." Third, analysis based upon the universe of cases uses concrete data about actual class members. Accordingly, unlike with sampling, results derived from analysis of that universe is based on what has actually occurred, rather than on what anyone assumes *might* occur.

However, there are occasions when a sampling approach may be preferred, such as when analysis of the universe of cases leads to bias. Dr. Palmer suggests that the data from this particular universe—all class members detained for at least 180 days and in the Los Angeles area at any time during the period between April 2010 and April 2011—may lead to biased results if all class members did not have the *exact same probability* of inclusion. Statisticians refer to this phenomenon as "selection bias." Dr. Palmer suggests

that this selection bias might, under some circumstances, be expected to lead to over-estimation of detention length. He then attempts to adjust for this selection bias by restricting his analysis to a sample of individuals drawn from the universe who were in custody during their 181st day during this period (the "in-period" sample).

However, Dr. Palmer's method leaves other sources of bias unaddressed. One of these, which is present in this data, statisticians refer to as "censoring" bias. As I mentioned in my earlier report, the data available were incomplete because individuals were not followed long enough to know either the eventual outcome for every case or the entire length of each detention period. This bias can be expected to lead to underestimating the eventual success of class members and their detention length.

As I noted in my earlier report, even when utilizing the data we have about all class members, "censoring" bias is present to some degree because we only know the ultimate outcome and detention length for individuals whose cases had *already* concluded. When one uses just an in-period sample of those class members, the "censoring" bias is magnified, because the percentage of individuals whose cases have not yet concluded rises.

2. Methodology for This Report

To assess whether Dr. Palmer's suggested method would produce materially different results from those provided in my original report, I re-analyzed the same data I used before. This time I followed the in-period sampling approach suggested by Dr. Palmer.

This re-analysis involved the following steps. First, I defined the "population" of interest to determine which individuals properly fell into the "in-period" sample for this population. Second, I performed the same analysis I conducted earlier, but just on this "in-period" sample. Where sources of bias were substantial, I used standard techniques for estimation to counteract that bias.

3. Defining the Proper In-Period Sample

Before one can apply a sampling approach, one must have a clear definition of what statisticians refer to as the *population of interest*. This is required if, as Dr. Palmer states, one wants to ensure that "all cases of interest have the same probability of selection for the sample" from this population. The implicit assumption inherent in such a method is that the "population of interest" is not simply class members during the April 2010-April 2011 period (the universe that my original report analyzed), but individuals who will qualify as class members subsequent to April 2011 and continuing on into the future.

It is worth noting at the outset that strictly speaking the in-period sampling methodology suggested by Dr. Palmer does not ensure that everyone in the population of interest has the same probability of selection. Indeed, individuals who only qualify as class members subsequent to April 2011 have no chance of being selected in the sample because we have no data concerning them. In addition, other factors that gave rise to the outcomes of interest—including the various factors impacting who ICE detains and, once detained, the class members' length of detention and ultimate success or failure—may change in the future. (For ex-

ample, we already know that the length of time immigration judges are taking to dispose of cases has been generally rising, which presumably has an impact upon how long future class members may take to obtain a final decision and therefore their length of detention.)

Nonetheless, I utilized Dr. Palmer's general method by treating class members detained during the April 2010-April 2011 period as a sample from which to draw conclusions about class members who have been or will be detained after that time period. I treated all individuals who will qualify as class members subsequent to April 2011 and continuing on into the future as encompassed within the population of interest.

During the course of preparing this analysis, and after consulting with Petitioners' counsel, I also made further adjustments to exclude individuals who were not class members but whose data were included in the initial information provided to me.

Out of the 1,026 records the government provided in the universe, there were a total of 83 individuals who Petitioners' attorneys instructed me were not properly part of the *population*,[4] leaving a total of 943 class

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[4] I excluded people from the original 1,026 data entries for the following reasons. First, there were two individuals that were not detained for 180 days. Second, there were an additional 24 individuals that had no ongoing administrative or judicial proceeding at any time subsequent to their entry into ICE custody. Prior to my completing my original report, I notified Petitioners' counsel about the existence of those individuals and they instructed me to exclude them from my analysis. The exclusion of the first two groups is discussed at page 4 and in footnote 5 of my original report. Upon preparing the analysis for this report, I discovered additional individuals for whom a final decision in their case already had been

members (943 = 1,026 - 83) from which to select the "in-period" sample. Applying the same methodology Dr. Palmer recommended—selecting class members who reached their 181st day of detention during the April 2010–April 2011 period—resulted in an in-period sample of 595 class members.[5]

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reached by the time they reached 180 days of detention. Thus, there was no ongoing administrative or judicial proceeding that prevented the government from deporting such individuals. After discussing the issue with Petitioners' counsel, they instructed me to exclude 57 individuals from my analysis for this report because they had concluded that these individuals were not class members. To assist the attorneys in their review to confirm that these individuals were not class members, I was asked to provide the field "appeal_rsvd" from the proceedings table which had not been included in the EOIR extract provided in this case, but was included in the extract EOIR prepares on all proceedings for the Transactional Records Access Clearinghouse (TRAC) at Syracuse University where I serve as the co-director. The availability of this data was discussed at footnote 2 in my earlier report.

[5] Dr. Palmer's in-period sample contained 662 individuals. I directly compared the individuals Dr. Palmer used in his sample with those contained in my sample using a file which Dr. Palmer provided listing the alien numbers in his "in-period" sample. The main reason for the differences between my sample and his was that he failed to exclude 81 of the 83 individuals from the data the government provided who were not class members. There also were other minor differences, although they do not affect the analysis in a material way. For example, for some reason, Dr. Palmer did not report receiving a complete list of the 1,026 individuals that was originally provided to Petitioners' attorneys in the initial data release; Dr. Palmer reports (at page 8 of his report) only receiving a list of "1,021 distinct alien numbers." Further, as explained at page 6 of his report Dr. Palmer excluded six individuals because he was concerned about differences in the names on these records. I did not exclude any individual on this basis. (I examined the data on these six individuals and found that the possible name discrep-

4. Identifying the Presence of Censoring Bias

Next I examined the data for the in-period sample to determine in how many cases the data had ended before the individual's court proceedings and detention history had reached their conclusions. As noted above, bias resulting from having incomplete information because cases are not followed long enough is referred to as "censoring bias."

Censoring bias was a significant problem in the in-period sample. As shown in Table 33, individuals had not been followed long enough for their cases to conclude in nearly one out of every five cases (18%). A total of 105 out of the 595 class members in the sample had data which was "censored" in this manner.

Table 33

Cases with Censored Data in Sample

	Number	Percent
Censored cases	105	18%
Remaining cases	490	82%
All cases	595	100%

In 104 out of these 105 cases the case was still pending and no final outcome had occurred. (In the remaining

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ancies that Dr. Palmer was apparently concerned about disappeared once records were restricted to the period of time beginning when these individuals entered ICE custody. Since the names were entirely consistent for the time period relied upon, whether or not these old records concerned the same or different individuals had no bearing on this analysis.)

case, the individual was still detained even though the data available indicated that a removal order had been entered and no additional information on any subsequent proceeding was located. Therefore, I treated the case as closed).[6]

Given the prevalence of censoring in the data for this in-period sample of class members, sample estimates must include an adjustment for their potential biasing effects. Thus, I adjusted the sample estimates using standard methodologies to correct for censoring bias. Then I compared the resulting in-period sample estimates with my original findings to see whether they have materially changed. As noted above, they do not.

Because the potential effects of selection bias as well as censoring bias may vary depending upon the specific purposes for which the data are being used, I divide my discussion into three sections based upon the type of measures or questions being addressed. First, I discuss findings related to outcome—whether the class members win or lose their cases. Next, I discuss results concerning the process in class members' cases—

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[6] Using the ICE information on detention current as of September 27, 2012 from ICE-EDI-010, which I received after my original report was prepared, I was able to determine that, as of that date, 19 sample members remained in detention. However, as long as proceedings continue and a final outcome has not been reached, this number can change either up or down. Even if a class member had been released from detention, the data show he or she can be placed back into ICE custody. For example, one class member was placed back into ICE custody on the day following an adverse decision by the BIA and remained detained during the class member's Ninth Circuit appeal. While he was counted as not detained in my earlier report, he is counted as detained here.

the types of proceedings involved, and types of relief requested. Finally, I discuss findings concerning detention length.[7]

B. Class Member Outcomes

1. *Success Rates*

The results initially reported on case outcomes are not materially affected by use of an in-period sampling approach. As Table 34 shows, a total of 176 individuals among the 595 class members in our sample had already won their case (30%). This number is higher than that found in my original report (26%). But there were an additional 104 individuals for whom their final outcome was unknown because their cases were still pending.

Given the already high "win" rate, it would not be reasonable to assume that in every one of the 104 pending matters the class member will eventually lose. Thus, some censoring bias clearly exists with respect to case outcomes. Perhaps the most common way to correct for this obvious bias is to use information from prior time periods for the adjustment. For example, if we can determine from prior periods what proportion of cases will eventually be won we can use this information to adjust the proportion of cases in the sample that are likely to be successful. The only data available, however, are the 348 class members in the population who were not in the in-period sample. Although

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[7] The analysis in Table 18 of my original report on aggregate detention days is not repeated here because Dr. Palmer and I are in agreement that selection bias should not be an issue when answering this question. See page 5 of Dr. Palmer's report discussing sampling approaches for measuring workload.

these individuals were followed for somewhat longer periods, 16 percent of these cases also were still pending at the time the data was obtained. Thus, the degree of censoring bias from this data with respect to outcome is only marginally lower than the degree for our in-period sample.

We are therefore left with having to make some further assumption for this adjustment. Without more data, the most straightforward approach is to assume the success rate for outstanding cases in the sample is similar to the success rate for cases that have already been concluded. This was the approach I used.

Table 34 presents these results, and compares them to those I reported earlier in Table 17 of my original report. In my original report, 26% had won their case. For the in-period sample, a higher percentage —30%—had won their case even before applying an adjustment for censoring bias.[8] Assuming that the success rate for outstanding cases will be the same as for cases that have already concluded, the success rate for the sample is 35%; that is, 35% of class members will eventually win their cases.

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[8] The reason that the sample had won a somewhat higher proportion of their cases than the universe—30% versus 26%—does not appear to be a result of selection bias. Success rates for the in-period and out-period individuals were essentially the same prior to the exclusion of the additional 57 individuals who were not class members but were unknowingly included in the universe I analyzed in my original report. Every one of the 57 individuals had lost their case and most of these individuals would have otherwise qualified to be in the in-period sample.

Table 34

Outcome of Case: Methods Compared

		Won Case*	
	Total	Number	Percent
Original report	1,000	263	26%
Sample results:			
Initial (subject to censoring bias)	595	176	30%
Final (after corrections for censoring bias)	595	207	35%

* Numbers for "won" do not include those who obtained orders for voluntary departure (VD). Results in my original report indicated that an additional 46 individuals (5%) received VD orders. Sample results found an additional 28 individuals received VD orders (5%) without correction and 33 (6%) after correction for censoring bias.

My original report (at Table 17) also compared the success rate for class members against two other groups. Table 35 repeats this comparison but uses the sample results. The numbers reported in the first two columns concerning outcomes in removal proceedings for the United States as a whole, and in all removal proceedings at the Mira Loma Detention Facility are taken directly from my original report. Those in column three report sample results after correcting for censoring bias.

Table 35

Comparing Outcomes in Removal Proceedings

	United States (majority not detained)*	Mira Loma Detention Facility*	Class Members
Removal proceedings decided	608,129	9,355	595
Number won by individual**	163,907	669	207
Number relief granted	90,865	514	184
Percent won by individual	*27%*	*7%*	*35%*
Percent granted relief	*15%*	*5%*	*31%*

* Immigration Court records current as of August 31, 2012 for the period FY 2010 - 2012. According to the latest published EOIR figures, for the U.S. non-detained cases made up 58% (FY 2011) and 56% (FY 2010) of proceedings, while Mira Loma hearings are just for detainees.

** Includes cases granting relief and terminated

The general thrust of these results is not materially altered from my original report, except that class members based upon sample results are somewhat more successful. Comparing the results for the U.S. as a whole (where the majority of individuals were not detained) with those for our class members, we see that class members were more successful—35% for class members as compared with 27% for all proceedings nationally. Indeed, class members were over twice as successful—31% versus 15%—in being awarded relief.

And again, the success rate for class members as compared with all detainees at the Mira Loma Detention Facility was stark. Class members' success rate was five times higher—35% versus 7%—and the percent awarded relief was now more than six times higher—31% versus 5%.

2. *Types of Proceedings*

Use of the in-period sampling method also results in no material change to the results originally reported concerning the types of proceedings. Records available on the in-period sample showed that—as before—Immigration Court proceedings were conducted in almost every case (96%). In slightly less than one out of three cases (32%) an appeal to the Board of Immigration Appeals ("BIA") was filed. Finally, in one out of six cases (16%), an appeal was taken to the Ninth Circuit Court of Appeals.

Table 36

Court Involvement in Case: Methods Compared

		Case Appealed to:			
		BIA		9th Circuit	
	Total	Number	Percent	Number	Percent
Original report	1,000	356	36%	197	20%
Sample results:					
Initial (subject to censoring bias)	595	190	32%	97	16%
Final (after corrections for censoring bias)	595	221	37%	121	20%

Again, however, some censoring bias is likely present in our sample because some future appeals (by either the government or the class members) are not yet reflected in the data because cases have not been followed long enough. Given the sizable number of appeals to the BIA and the Ninth Circuit that are already recorded in the data and given the large number of censored cases, it is not reasonable to assume that *no* further BIA or Ninth Circuit Appeals will occur. Indeed, over a third (36%) of pending cases are still waiting for the immigration judge to issue an initial decision in their case. Thus some estimate to correct for censoring bias is needed.

Unlike the situation when we estimated sample members' success rates, it is *not* reasonable to assume that sample members whose cases have reached a conclusion are similar to those whose cases are still pending. Cases that progress more quickly through the system and thus have already reached a final outcome may not be representative of those that progress more slowly for purposes of what we are trying to estimate here—the number of cases that will be appealed.

A standard way of attempting to correct for censoring bias under these circumstances is to add in cases from prior periods which were not part of the original sample to those from the sample and calculate an overall average or proportion from this combined set. This approach, which we later explain in more detail, is sometimes referred to as the "self-balancing" method. The "self-balancing" method is appropriate under circumstances where cases originating in prior periods are subject to substantially less censoring bias, usually because they have been followed for much longer. Statisticians recognize that this approach is an approximation, but it has been found to work quite well as a practical matter in many circumstances and hence is widely used.

Using this technique, we combine information on the 348 class members not selected for the in-period sample with the 595 individuals in the sample and use this combined set to derive an overall proportion of cases that record a BIA appeal and a Ninth Circuit appeal. Not surprisingly, these results are almost identical to those in my original report, which were reported at Table 5 of that report.

3. *Relief Applications*

Use of the in-period sampling method also results in no material change to the results originally reported concerning relief applications. Results concerning relief applications for the in-period sample show that 75% of class members filed relief applications, and 29% of class members had been granted relief thus far by an immigration judge. As shown in Table 37 these percentages are similar—although slightly higher—than those from my original report.

Table 37

Applications for Relief: Methods Compared

		Relief Application:			
		Filed		Granted	
	Total	Number	Percent	Number	Percent
Original report	1,000	713	71%	251	25%
Sample results:					
Initial (subject to censoring bias)	595	444	75%	171	29%
Final (after corrections for censoring bias)	595	444	*75%	184	31%

* No correction for censoring bias needed.

Unlike with respect to outcomes and types of proceedings, the problem of censoring bias is less likely to occur in the data on relief applications because such applications tend to be filed earlier in proceedings and are thus more likely to have been recorded in the data for cases where proceedings have not yet concluded. Thus, no correction for censoring bias is made.

Censoring bias for the reasons previously discussed, however, is likely to have materially affected our estimate of the proportion of class members who are granted relief. We have already estimated the proportion of class members who won relief (31%). This

figure was reported in Table 35. We have therefore used this estimate for the proportion of class members who eventually are granted relief as shown in Table 37.

Sample results were also not materially changed for my findings on the type of relief applications filed, as well as for their grant rates. If anything, consistent with the larger proportion found to have filed relief applications and to have been granted relief when the sample method was used, these statistics when examined by application type also rose slightly. With respect to WOR/WCAT, only 19 sample members or just 3% only applied for these types of relief. This was the exact same percentage I initially reported. And again, given their relatively small numbers, the same general picture emerged if those who only sought, or were only awarded relief, under WOR or WCAT were excluded rather than included.

C. Detention Length

Among all the questions examined in my original report, the use of the in-period sampling method to measure detention length is the most impacted by bias. As Dr. Palmer noted, some sampling bias is present in the original analysis of detention lengths, because individuals detained for longer periods of time are more likely to be selected from the universe of class members detained from April 2010 to April 2011. However, censoring bias—which leads to an underestimation of detention lengths—is also present in the original report, and is magnified when we use the in-period sampling method to analyze detention lengths. This is because in-period detainees have been followed for a shorter period of time and a higher percentage of cases have not yet concluded, leaving their detention

length unknown. Data that has been publicly released by ICE as well as by the Immigration Courts to TRAC and to others indicates that some individuals remain in ICE custody for many years while waiting for a final decision in their case. Yet the data on class members on which my original report was based stopped following some class members after only 18 months.

For a measure such as detention length where the custody time can be lengthy, to obtain an uncensored data set we would have to follow all of the individuals in the sample for an extensive period of time, until they were all released from detention. Because this is often not possible, there are three approaches commonly used to correct for censoring bias in situations such as this. The first method starts with the in-period sample, but then uses an external source of data to estimate how long all members of that group will eventually be detained. The second method starts with all class members on whom we have data, but then uses a weighting method to correct for selection bias to bring the under-represented segment in the out-period group into parity with the proportion found within the in-period group. An external source of data is similarly required with the second method. However, because the out-period group was followed longer, less correction is needed. The third method is the "self-balancing" approach described above. It takes the universe of individuals observed in the time period available, and where two sources of bias are acting in opposite directions, assumes that these two sources of potential bias—selection bias and censoring bias—cancel each other out. Unlike the other two approaches, the self-balancing method does not require

any outside information or assumptions about the eventual distribution of detention length for class members. As I explain below, I ultimately concluded that the third method was the most conservative and most accurate method to measure detention lengths in this case.

Both of the first two methods require use of reliable additional data about the entire distribution of detention times that describes our population of interest. This information is then used to correct the censored data values so that the detention length used in our analysis more closely corresponds to what the actual detention times will ultimately be for those individuals who are still detained. These first two methods can be used only if reliable data describing the distribution of detention times for our population of interest exists.[9]

The first step was to locate additional data on the distribution of detention times for the population of interest so that the first two methods could be applied. Because we know that this class includes people who are detained for very lengthy periods, we must utilize an accurate source of externally-available data to approximate what the distribution of detention times looks like for class members that would include those

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[9] In his deposition, Dr. Palmer suggested that the censoring problem could be addressed by using the out-period detainees to develop estimates for the length of future detention for class members in the in-period sample that remained detained. However, the out-period data suffers from the same basic censoring problem—a significant number of out-period detainees remained detained—that would bias the data and result in an under-estimate of detention length.

with particularly lengthy times in custody. However, this presents a serious problem. Although I have actively gathered data available on ICE detentions as well as on immigration proceedings for a number of years through my work with TRAC, I know of no other data of comparable completeness and specificity to the data that was ordered disclosed through discovery in this case and that was used in my original report. To correct for the censoring bias present here, however, what is needed is comparable data for an extremely long period of time.

In an attempt to find such data I utilized detailed records on all immigration court proceedings covering the past twenty years that TRAC obtained from EOIR. I first identified all proceedings of detained individuals held at detention facilities in Los Angeles County over the last twenty years. I then eliminated from consideration any removal or deportation case where at any point custody for the individual was recorded as other than detained. From these I selected those where a decision concluding the case—that is a decision recorded as removal, voluntary departure, grant of relief, or a decision terminating the case allowing the individual to remain in the country—was recorded.

Following a method similar to the one Dr. Palmer used to avoid any selection bias, I then narrowed the set of cases to those where the decision concluding the case occurred in the same twelve month window used to compile the data used in the prior reports—April 2010 to April 2011. (I will refer to this as the "exit" data since it uses the data on when individuals' cases conclude.) Using these cases I computed the number of

days between ICE's initial filing of the action in immigration court and the date of the court's final decision in order to approximate the length of custody. Selecting only those cases where this period was at least 180 days, I then used this information in order to derive alternative estimates for the average number of days that class members remain in custody.

From the outset I had reservations as to the suitability of this exit data for the purposes needed. Because the data TRAC receives does not contain alien numbers or detainee names, I had no way to match detainee records in EOIR's data with those from ICE's data and therefore could only approximate actual time in ICE custody for each detainee. And for the same reason, it was not possible to match up detainee records through all levels of appeal. This left some uncertainty that these data accurately captured the population of interest—that is, all individuals who qualified as class members—or that I in fact was observing the *final* outcome in each case. However, I pressed forward as I determined that it was preferable to at least apply the first two methods using this exit data, given that it is the best available external data source, in order to see what the result would be using the in-period detainee data.

1. ***The First Method for Calculating Detention Length***

I then applied the first method for calculating detention lengths using our in-period sample. I did this by taking the recorded times for the individuals who were still detained with pending cases, comparing them with the times I computed for the identical proportion of individuals from the exit data, and then correcting the

recorded times to reflect how long the exit data indicated we should expect them to remain detained. I then computed the average detention length for detainees in the in-period sample. This resulted in an estimate for the average detention period for class members of 474 days. Since this result was substantially larger than the value I had derived in my original report (404 days), this increased my doubts as to the feasibility of obtaining reliable results using the first method.

2. *The Second Method for Calculating Detention Length*

I then applied the second method of calculating detention lengths. The second method utilizes a different approach for correcting for selection bias. It uses the entire population of 943 class members, rather than only those selected for the in-period sample, and then uses a weighting method to correct for selection bias to bring the under-represented segment in the out-period group into parity with the proportion found within the in-period group. This "weighted sample" thus corrects for selection bias, but does not require throwing away data on any class members.

Under many circumstances this *weighted sample* method gives better precision and hence is often preferred by statisticians over the first method, particularly because it does not require disregarding data on any class members (as the first method does). Because those not selected for the in-period sample had been followed longer, censoring bias on detention time also was significantly less. Thus, relatively speaking, the weighted combined sample needed less correction for censoring bias.

I then computed the average detention length using the second method, by correcting censored times in the weighted sample to reflect how long the exit data indicated we should expect those still detained to remain detained. This resulted in an estimate for the average detention period for class members of 478 days. This result again was much larger than the value of 404 days I had derived as the average detention days for class members in my original report, and further undermined my confidence in the use of any method that required an external source of data.

Based upon these results, I concluded that it was infeasible to derive reliable estimates for detention lengths for class members using either of the first two methods. These methods required more reliable information about population detention times than was provided by available data.

3. *The Third Method for Calculating Detention Length*

The third method I used was the self-balancing approach to correct for both selection and censoring bias. I started with the same data on detention time for the 1,000 detainees I had used in my original report. As we have discussed, there are two primary sources of known bias.[10] The effect of censoring bias is to make

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[10] There is also a third source—the inclusion of 57 detainees who were not class members. Because their cases completed before the 180 detention days were reached, their detention times were also shorter than average. Thus, their inclusion depressed the average detention time for the class. It often happens in studies that the determination of membership in the population of interest inadvertently includes some individuals who should have been excluded, or excludes some individuals that should have been

estimates of detention times too short, while selection bias leads to the opposite effect—making estimates of detention times too long. If these two biases are approximately the same magnitude, they cancel each other out, and resulting estimates of detention time would be correct. This method turns out to be the equivalent of what I employed when I was simply analyzing the universe of detainees in my original report, using all of the data available and making no predictive assumptions about how long people would be detained for in the future. Thus, the estimates that result from the self-balancing approach are identical to the ones that were reported there.

While we cannot know in advance if the result retains some "net" bias in one direction or the other, use of the self-balancing method allows us to avoid making further assumptions about the nature of the sample and imposing adjustments to correct for resulting biases. In this sense it has the advantage of being based on what we know has occurred, rather than on what *might* occur.

Self-balancing is the standard method used by statisticians to correct for censoring bias in the absence of adequate data to estimate and correct for it. Adding in cases from prior periods which were not part of the original sample and calculating an overall average from this combined set will generally result in better estimates than selecting a perfectly random sample

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included because of imperfect information. The self-balancing approach treats these imperfections as simply other potential sources of bias that the method balances out. In contrast, the in-period and weighted sampling methods assume that we can identify the population of interest precisely.

where there is censoring bias. This approach works because cases originating in prior periods usually have been followed longer and thus either have no censoring bias or (as in this case) are subject to less censoring bias. Thus, we know that it generally will lead to better estimates to use this self-balancing approach than to use a sample that is chosen to avoid selection bias but fails to account for censoring bias.

Of course statisticians recognize that this approach is an approximation, but it has been found to work quite well as a practical matter in many circumstances and hence is widely used. In my professional judgment, given the state of available data, the estimates produces by this method are the most reliable we have. This method, which is described as a self-balancing estimation technique when conducting sampling, is exactly equivalent to the analysis in my original report. Hence the results I reported there are the most reliable we have on the average detention length for all individuals who qualify or will qualify as class members in the future—our population of interest.

Appendix: Sample Results for Section 236(c) and Section 235 Subclasses

Using the same in-period sampling approach for subclasses resulted in a total of 252 individuals in the Section 236(c) Subclass sample, and 55 in the Section 235 Subclass sample. Table 38 compares how many won their cases, and estimates—both prior to correction and after corrections for censoring bias—their win rates. As we saw for the population as a whole, the in-period sampling method resulted in somewhat higher success rates than originally reported.

Table 38

Outcome of Case: Methods Compared for Subclasses

	Total	Won Case* Number	Won Case* Percent
Section 236(c) Subclass			
Original report	460	150	33%
Sample results:			
Initial (subject to censoring bias)	252	88	35%
Final (after corrections for censoring bias)	252	97	38%
Section 235 Subclass			
Original report	68	41	60%
Sample results:			
Initial (subject to censoring bias)	55	35	64%
Final (after corrections for censoring bias)	55	36	65%

* Numbers for "won" do not include those who obtained orders for voluntary departure (VD). For the Section 236 Subclass an additional 1% of individuals won VD orders under either method. There were no VD orders in the Section 235a Subclass.

Expert Statistical Report of Dr. Chester I. Palmer

Alejandro Rodriguez et. al. v. Timothy S. Robbins, et al.

Civil Action No. CV 07-3239-TJH (RNBx)
Central District of California, Western Division

Oct. 12, 2012

Executive Summary

Statistical analyses were performed on data for aliens detained in the Central District of California for at least 180 days without an individualized bond hearing before an immigration judge as of some date in the period from April 21, 2010 through April 21, 2011. In order to provide an appropriate sample, the analyses were restricted to aliens who reached their 181st day of custody in that time period.

- Based on the reasons coded in the data, most adjournments requested by the aliens were for a relatively small number of different reasons. Five reasons (time for preparation, time to seek representation, time to file another application, time requested by the alien or the alien's representative, and time to file for asylum) accounted for about 84% of the adjournments requested by the aliens.

Analyses of adjournments requested by the aliens showed:

- 86.9% of the aliens requested at least one adjournment, and over half of them requested three or more. Only 13.1% of the aliens never requested an adjournment.

- For those aliens requesting at least one adjournment, the total resulting delay varied from 5 days to 562 days; the median was 121 days and the mean (average) was 136.3 days.
- In addition to the 13.1% of aliens who did not request an adjournment, another 5.6% requested adjournments that totaled 30 days or less; 22.7% requested adjournments totaling 181 days or more.

Analyses of adjournments requested by the aliens during just their first 180 days of custody showed:

- 84.7% of the aliens requested at least one adjournment, and 66.2% requested two or more Only 15.3% of the aliens did not request at least one adjournment during their first 180 days of custody.
- For those aliens requesting at least one adjournment during their first 180 days of custody, the total resulting delay varied from 6 days to 269 days; the median was 101 days and the mean (average) was 105.9 days.
- In addition to the 15.3% of aliens who did not request at least one adjournment during their first 180 days of custody, another 6.0% requested adjournments that totaled 30 days or less; 34.1% requested adjournments totaling 121 days or more.

Introduction

This report presents statistical analyses of events during the periods of custody of aliens who had been detained by U.S. Immigration and Customs Enforce-

ment without an individualized bond hearing before an immigration judge for at least 180 days or more as of some date in the period from April 21, 2010 through April 21, 2011 and, as of some date within that period, were being held in facilities in the Central District of California. The report was prepared at the request of the attorneys for defendant in the litigation *Alejandro Rodriguez et. al. v. Timothy S. Robbins, et al.*, Civil Action No. CV 07-3239-TJH (RNBx), filed in the Central District of California, Western Division.

The information for the analyses in this report came was supplied by counsel for defendant. More specifically, the report is based on the following information:

- An Excel spreadsheet named "AC Delays.xls" received on 09/27/2012. This was an update of an earlier spreadsheet of the same name received on 09/25/2012 with a small number of additional rows. These spreadsheets contained information on the dates that the aliens entered custody and left custody and the dates of hearings, with codes indicating whether each hearing was adjourned and, if so, whether the adjournment was requested by the alien. This is the primary information used in the analyses in this report.
- An Excel spreadsheet named "dbo_tblAdjournmentCodes.xlsx" received on 09/25/2012 that was used only to obtain descriptive labels for the codes for adjournment reasons in the AC Delays" spreadsheets.
- An Excel spreadsheet named "Rodriguez Update 09-26-12.xlsx" received on 09/27/2012 that

was used only to find end dates of custody for 27 individuals for whom those dates were missing from the "AC Delays" spreadsheets.

- An Excel spreadsheet named "Detention Stays in LOS AOR.XLSX" that was received on 10/02/2012 and that was used only to check that no aliens were inadvertently omitted from the "AC Delays" worksheet. No information from this spreadsheet was used in the analyses described in this report.
- Four e-mails from Sarah Wilson: two dated 10/01/2012, one dated 10/03/2012, and one dated 10/10/2012. These messages were used to provide start and/or end dates of custody for about 15 individuals and to identify a few individuals to be excluded from the analyses.

I also had several discussions with attorneys for defendant and data custodians to ensure that I understood the various data sets, but those discussions did not supply any information used in the analyses.

This report was prepared by Dr. Chester Palmer, Senior Statistician, ERS Group. Dr. Palmer joined ERS Group in 1998 after twenty-four years as a faculty member in the Department of Mathematics at Auburn University, Montgomery, Alabama, where he taught a variety of courses in mathematics and statistics. Dr. Palmer has testified as an expert witness in statistics at deposition and/or at hearing in 19 cases in various federal district courts, at one arbitration, and at one administrative proceeding. Dr. Palmer's vita, including a list of testimony, forms Appendix A to this report.

I. Issues in the Analyses

A. Determining a Proper Sample

It is my understanding that aliens were included in the data set if they had been detained by U.S. Immigration and Customs Enforcement without an individualized bond hearing before an immigration judge for at least 180 days or more as of some date in the period from April 21, 2010 through April 21, 2011 and, as of some date within that period, were being held in facilities in the Central District of California. This method of selection raises some statistical issues.

To see why, consider a simpler example. Consider a hospital that wants to draw a sample of patient stays. Suppose that, for the time period of interest, 25 patients each spent 1 day in the hospital and 1 patient, Mr. Long, spent 30 days in the hospital. There are several ways in which the hospital might draw a sample for analysis.

- Individual-Based: An individual-based sample might proceed from the fact that the hospital had 26 patients, and randomly sample among them. Each patient has the same probability of inclusion in this sample.
- Day-Based: Alternatively, the hospital might select one day and sample those patients. In this case, because Mr. Long spent 30 days in the hospital and each other patient spent only one day, Mr. Long is much more likely to be included in the sample than any of the other patients.

A sample is called "biased" (a technical term in statistics) if not all cases of interest have the same proba-

bility of selection for the sample. In the example above, the day-based sample is a biased sample of individuals because individuals with longer stays are more likely to be selected than other individuals. In the statistical language, patients with long stays are overrepresented If the hospital uses the day-based sample for a survey of patient satisfaction, there will likely be too many patients with long stays (and presumably more serious conditions) in the sample, and their opinions will count more than the opinions of patients with shorter stays. If the typical level of satisfaction for patients with long stays is different from that of patients with shorter stays, the results of the analysis could be quite deceptive.

On the other hand, there are some purposes for which the day-based sample would be better. If the hospital wants to analyze its daily workload, the day-based sample is appropriate because Mr. Long really did make up a higher proportion of the workload than did any of the other patients.

To see the similar issue with the data set for this litigation, consider two hypothetical aliens, Mr. Short and Mr. Long, who entered custody on the same day, April 21, 2009. Mr. Short was detained for 7 months prior to his hearing, then released immediately after his hearing in November 2009. Thus, he is a class member, but he is not included in the data set because he was not in custody during the time period for the data (April 21, 2010 through April 21, 2011). Mr. Long was detained for 13 months prior to his hearing, then released immediately after his hearing in May 2010. Thus, he is a class member and he is included in the data set because he was in custody during the

time period for the data. In summary, the method of selection for the data set is biased in favor of including aliens with longer periods of custody rather than those with shorter ones.

This bias may or may not matter depending on the analyses to be performed. For example, if one analyzes what happened during the first 180 days each alien was in custody, the bias probably does not matter (unless there was some change in procedure over time). On the other hand, if one analyzes how long people were held in custody, or performs any other analysis that looks at lengths of time, the bias may have a substantial effect because aliens with longer periods of custody are overrepresented.

The simplest way to avoid such a bias and create an individual-based sample is to assign to each individual a single date and then use that date to determine whom to include. In the hospital example, one might sample based on the first day each person was in the hospital, or the last day; either would give Mr. Long the same probability of selection as the other patients. For this litigation, the most straightforward way to sample from the data set is to take those aliens in the data set for whom the 181st day of detention fell in the time period for the data (April 21, 2010 through April 21, 2011). That has the advantage that, if one believes that 181 days from the beginning of custody is an especially important date, one has everyone for whom that date falls in the time period for the sample. I have followed that practice, and in the body of this report I give results for only those aliens; I refer to them as "in-period". It would be reasonable for the reader to wonder how much of a difference that makes

(in fact, not much for most of my analyses), so I have included parallel tables without that restriction in Appendix B.

B. Details of the Analyses and Data Issues

Analyses were conducted based on alien number as provided in the data sets.

The following records were not used in the analyses:

- There are six alien numbers that are accompanied by names that make it appear that the records may not all pertain to the same individual: 022660128, 036901593, 076186391, 077052958, 077324537, and 095425585. These six alien numbers have been excluded from the analyses.
- There are two alien numbers for which the calculated stay in custody is less than 180 days: 090503375 and 093166641. These two alien numbers have been excluded from the analyses.
- There are three alien numbers for which there are confidentiality issues under the protective order in this case. These three alien numbers have been excluded from the analyses.
- For some aliens, the data sets contain information relating to events that occurred before or after the period of custody that resulted in the alien being included in the data set; for example, events relating to prior proceedings. Any records from before the beginning of the relevant period of custody (the variable name in the data set is "Entered Custody") or on or af-

ter the end of that period ("Book Out") are not used in the analyses.

- Records with adjournment reason '99', defined in the documentation as "Data Entry Error," are not used in the analyses. It is my understanding that no hearings actually occurred on those dates.

The following conventions were used in the analyses:

- The delay due to an adjournment is calculated as the number of days until the next hearing date or, if the alien leaves custody before the next hearing date, the number of days until the alien leaves custody.
- Records with no reason for the adjournment are treated as hearing dates but are not considered as adjournments requested by the alien. Many of these records are for events before the time period of interest; about 70% are before 2008, including about 56% from before 2004. Others apparently represent hearings that, at the time the data were collected, were in the future; about 18% were in October 2012 or later.
- It is my understanding that adjournment code '8A', defined as 'IJ Completion prior to hearing', does not represent a hearing but is likely to represent some kind of change in the status of the alien. Those actions are also counted as hearing dates but are not considered as requested by the alien, so they do not affect counts of adjournments requested by the aliens. They do terminate delays of previous adjourn-

ments, so they may shorten, but not lengthen, those delays.

In some cases, there are multiple records in the data set for the same alien number and date. These situations were treated as follows:

- If there are multiple records with the same adjournment reason, they are treated as duplicates and all but one of them are deleted.
- In counts of adjournments, multiple adjournments on the same date are counted as a single adjournment, although there may be multiple reasons counted for that adjournment.
- If there are multiple reasons for adjournment on the same date, if any of the reasons indicates an adjournment at the request of the alien, that adjournment is counted as being at the request of the alien.

After my initial review of the data, I requested some additional information. To put the numbers here in context, the original data set contained 10,283 records (i.e., dates of adjournments) for 1,021 distinct alien numbers; 4,874 records showed delays requested by the alien. I received the following additional information as discussed in the Introduction above:

- An updated list of adjournments including 124 additional records, 59 of which were delays requested by the alien.
- There were 13 alien numbers in the original data for which the dates the alien entered custody and left custody were both missing. I received information on the dates all 13 entered custody

and the dates on which 12 of them left custody. (The thirteenth was still in custody.)

- There was one alien number for which the original data showed the date for leaving custody as prior to the date for entering custody. I received a corrected date for leaving custody.
- A file that provided the dates when 27 aliens left custody when those dates had been missing in the original data.

The additional data had little effect on the results of the analyses. The additional information on adjournments added just over 1% to the original number. The dates for entering custody allowed 10 additional aliens to be included in the analyses. (Three of the 13 were not used for reasons discussed above.) The dates for leaving custody had little effect on the analyses as those dates play a very minor part in the analyses.

II. Results of Analyses

A. Types of Adjournments at the Request of the Alien and Lengths of the Resulting Delays

Table 1 below gives information about the number of adjournments for each of the reasons labeled in the data base as requested by the in-period aliens and the average resulting delay in days.

Table 1: Types of Requested Adjournments and Average Resulting Delays			
Code	Description	Number	Mean Delay
[illegible]	PREPARATION--ALIEN ATTORNEY REPRESENTATIVE	594	37.4
01	ALIEN TO SEEK REPRESENTATION	382	42.6
06	ALIEN TO FILE OTHER APPLICATION	319	42.8
12	OTHER ALIEN ALIEN'S ATTY REPRESENTATIVE REQUEST	284	39.8
[illegible]	ALIEN TO FILE FOR ASYLUM	184	34.0
22	SUPPLEMENT ASYLUM APPLICATION	81	49.1
7C	I-130 PENDING	74	41.6
13	OTHER NO-SHOW BY ALIEN ALIEN'S ATTORNEY OR REP	58	29.0
39	RECORDS CHECK FINGERPRINTS OVERSEAS INVESTIGATION	[illegible]	37.7
7A	ALIEN APPLICATION PROCESS	19	51.6
[illegible]	ALIEN OR REP REJECTED EARLIEST POSSIBLE HEARING	14	73.9
21	CONTESTED CHARGES	13	65.4
23	ASYLUM APPLICATION WITHDRAWN RESET FOR OTHER ISSUE	[illegible]	53.0
09	ALIEN CLAIM TO U.S. CITIZENSHIP	4	47.3
[illegible]	ILLNESS OF ATTY REP	[illegible]	[illegible]
38	ILLNESS OF ALIEN	1	[illegible]
40	ILLNESS OF WITNESS	1	51.0
7D	I-140 PENDING	1	7.0
7E	I-730 PENDING	1	53.0
OT	ALIEN ATTORNEY REP TO FILE OTHER APPLICATION	1	42.0
All		1982	

Table 1 indicates that most of the delays labeled in the data base as requested by the alien are for one or more of a relatively small number of reasons. The top five reasons account for about 84% of the delays and the top nine reasons account for about 97%. The average delay is about 40 days, and does not vary much among the most common reasons for the request.

Table B-1 in Appendix B contains similar information including out-of-period aliens.

B. Counts of Requested Adjournments by Alien

Table 2 below shows the number of adjournments requested by in-period aliens.

Table 2: Number of Adjournments Requested		
Number of Requests	Number of Aliens	Pct of Aliens
None	87	13.1
1	92	13.9
2	125	18.9
3	113	17.1
4	104	15.7
5	62	9.4
6	43	6.5
7	17	2.6
8	6	0.9
9	4	0.6
10 or more	9	1.4
Total	662	100.0

Table 2 shows that only 13.1% of the in-period aliens never requested an adjournment. From an alternative point of view, 86.9% of them requested at least one adjournment, and over half of them requested three or more.

Table B-2 in Appendix B contains similar information including out-of-period aliens.

C. Counts of Adjournments Requested in the First 180 Days of Custody

Table 3 below show the number of adjournments requested by in-period aliens where the count includes only those requested in the first 180 days of custody.

Table 3: Number of Adjournments Requested in First 180 Days of Custody		
Number of Requests	Number of Aliens	Pct of Aliens
None	101	15.3
1	123	18.6
2	151	22.8
3	165	24.9
4	88	13.3
5	27	4.1
6	5	0.8
7	2	0.3
Total	662	100.0

Table 3 shows that only 15.3% of in-period aliens did not request at least one adjournment during their first 180 days of custody; 84.7% did request at least one, and 66.2% requested two or more. Recall that the average delay resulting from a requested adjournment was about 40 days. Few aliens requested more than 4 adjournments within their first 180 days

of custody; in most cases, there probably was just not enough time to request more.

Table B-3 in Appendix B contains similar information including out-of-period aliens.

D. Total Delays for Adjournments Requested by Aliens

Table 4 below provides summary information by alien on the total delays resulting from the adjournments requested by the in-period aliens. Note that this table does not include the 87 in-period aliens that did not request an adjournment. (See Table 2.)

Table 4: Summary Statistics on Total Delays for Adjournments Requested by Aliens	
Number of aliens	575
Shortest delay	5 days
Median delay	121 days
Mean delay	136.3 days
Longest delay	562 days

Table B-4 in Appendix B contains similar information including out-of-period aliens.

Table 5 below shows the distribution of the total length of the delays requested by in-period aliens.

Table 5: Distribution of Total Delays for Adjournments Requested by Aliens		
Length	Number of Aliens	Pct of Aliens
None	87	13.1
1 to 30 days	37	5.6
31 to 60 days	78	11.8
61 to 90 days	86	13.0
91 to 120 days	80	12.1
121 to 150 days	81	12.2
151 to 180 days	63	9.5
181 days or more	150	22.7
Total	662	100.0

The table shows that there was quite a bit of variation between different in-period aliens in the length of the delay resulting from adjournments that they requested. In addition to the 87 aliens who did not request an adjournment, another 37 requested adjournments that totaled 30 days or less. At the other end of the scale, 150 requested adjournments totaling 181 days or more.

Table B-5 in Appendix B contains similar information including out-of-period aliens.

E. Total Delays for Adjournments Requested by Aliens During the First 180 Days of Custody

This section contains the results of analyses parallel to those in Section D immediately above but only for

those delays that in-period aliens requested during the first 180 days of custody. Note that it is possible for an adjournment requested during the first 180 days to continue beyond the 180-day mark, and the full length of the adjournment is included in the analyses.

Table 6 below provides summary information on the resulting delays. Note that this table does not include the 101 in-period aliens that did not request an adjournment. (See Table 3.)

Table 6: Summary Statistics on Total Delays for Adjournments Requested by Aliens in Their First 180 Days of Custody	
Number of aliens	561
Shortest delay	6 days
Median delay	101 days
Mean delay	105.9 days
Longest delay	269 days

Table B-6 in Appendix B contains similar information including out-of-period aliens.

Table 7 below shows the distribution of the total length of the delays requested by in-period aliens.

Table 7: Distribution of Total Delays for Adjournments Requested by Aliens in First 180 Days of Custody		
Length	Number of Aliens	Pct of Aliens
None	101	15.3
1 to 30 days	40	6.0
31 to 60 days	91	13.7
61 to 90 days	100	15.1
91 to 120 days	104	15.7
121 to 150 days	103	15.6
151 to 180 days	76	11.5
181 days or more	47	7.1
Total	662	100.0

Even after restricting to adjournments requested during the first 180 days of custody, there was quite a bit of variation between different in-period aliens in the length of the delay resulting from adjournments that they requested. In addition to the 101 aliens who did not request an adjournment, another 40 requested adjournments that totaled 30 days or less. At the other end of the scale, 226 (34.1%) requested adjournments totaling 121 days or more.

Table B-7 in Appendix B contains similar information including out-of-period aliens.

III. Statement of Compensation and Signature

The author of this report is employed by ERS Group, which currently bills his time at $475 per hour.

[Oct. 12, 2012]
Date

/s/ CHESTER I. PALMER
CHESTER I. PALMER

* * * * *

Appendix B

Tables Parallel to Those in the Text but Including Out-of-Period Aliens

Table B-1: Types of Reopened Adjustments and Average Resulting Delays

Code and Description	All		In period			
			No		Yes	
	N	Mean wait	N	Mean wait	N	Mean wait
01 ALIEN TO FILE NATURALIZATION	774	44.2	331	45.3	382	42.8
02 DEPORTATION--ALIEN/ATTORNEY REPRESENTATIVE	182	39.5	357	41.4	924	37.6
03 ALIEN TO FILE NEW ASYLUM	238	36.1	75	48.2	156	34.0
04 ALIEN TO FILE OTHER APPLICATION	592	45.0	238	48.1	319	42.8
11 OTHER NO-SHOW BY ALIEN/ALIEN'S ATTORNEY OR REP.	104	32.0	46	39.8	58	25.5
12 OTHER ALIEN/ALIEN'S ATTY-REPRESENTATIVE REQUEST	551	43.7	347	45.4	204	41.9
21 PREFERENCE ASYLUM APPLICATION	214	42.1	33	47.2	81	40.1
31 ALIEN OR REP. REQUESTS EARLIEST POSSIBLE HEARING	16	73.9	2	78.0	14	73.8
32 ASYLUM APPLICATION WITHDRAWN/REFER FOR OTHER LEGIS	9	75.3	4	113.5	5	53.3
36 RECORDS INCOMPLETE/VERIFICATION/CRIMINAL INVESTIGATION	99	56.4	38	62.6	61	51.7
38 ILLness OF ALIEN	9	43.2	3	47.9	1	7.3
39 ILLness OF ATTORNEY	7	59.2	3	67.8	2	35.2
40 ILLness OF WITness	1	51.9	0	0	1	51.9
50 CONSULATE CHANGES	21	46.3	5	43.8	13	48.5
52 JURISDICTION MOVED WITH THE ALIEN	4	134.0	4	135.0	0	0
58 Alien Claim to U.S. Citizenship	10	32.2	6	41.9	4	17.3
78 ALIEN APPLICATION DENIED	23	36.9	8	47.0	15	31.6
79 I-130 PENDING	178	44.5	104	53.3	74	41.0
79 I-485 PENDING	1	7.8	0	0	1	7.8
79 I-730 PENDING	1	53.9	0	0	1	53.9
79 PENDING NATURALIZATION OF PETITIONING RELATIVE	1	43.2	1	89.0	0	0
87 ALIEN/ATTORNEY/REP. TO FILE OTHER APPLICATION	1	42.0	0	0	1	42.0
ALL	3438	41.9	1431	46.6	1352	35.7

Table B-2: Number of Adjournments Requested

	All		in_period			
			No		Yes	
	N	Pct	N	Pct	N	Pct
All	1013	100.0	349	100.0	664	100.0
Count						
0	113	11.2	26	7.5	87	13.1
1	119	11.7	27	7.7	92	13.9
2	156	15.4	31	8.9	125	18.8
3	166	16.4	53	15.2	113	17.0
4	142	14.0	33	9.5	109	16.4
5	115	11.4	53	15.2	62	9.3
6	83	8.2	43	12.3	40	6.0
7	55	5.4	38	10.9	17	2.6
8	19	1.9	12	3.4	7	1.1
9	13	1.3	5	1.4	8	1.2
10	9	0.9	5	1.4	4	0.6
11	9	0.9	6	1.7	3	0.5
12	4	0.4	3	0.9	1	0.2
13	1	0.1	1	0.3	0	0.0
14	3	0.3	3	0.9	0	0.0
15	1	0.1	1	0.3	0	0.0
19	1	0.1	0	0.0	1	0.2
22	1	0.1	1	0.3	0	0.0
23	1	0.1	1	0.3	0	0.0

Table B-3: Number of Adjournments Requested in First 180 Days of Custody

		in_period			
	All	No		Yes	
	N	Pct	N	Pct	N	Pct
All	1010	100.0	348	100.0	662	100.0
Count						
0	140	13.9	39	11.2	101	15.3
1	159	15.7	36	10.3	123	18.6
2	223	22.1	72	20.7	151	22.8
3	274	27.1	109	31.3	165	24.9
4	161	15.9	73	21.0	88	13.3
5	42	4.2	15	4.3	27	4.1
6	5	0.5	4	1.1	1	0.2
7	3	0.3	1	0.3	2	0.3

Table B-4: Summary Statistics on Total Delays for Adjournments Requested by Aliens

		in_period		
		All	No	Yes
Total Delay	N	897	322	575
	Min	5.0	6.0	5.0
	Median	148.0	221.0	121.0
	Mean	171.2	233.7	136.3
	Max	556.0	556.0	362.0

Table B-5: Distribution of Total Delays for Adjournments Requested by Aliens

	All		in period			
			No		Yes	
	N	Pct	N	Pct	N	Pct
All	1013	100.0	345	100.0	668	100.0
Total Delay						
None	113	11.2	26	7.5	87	13.0
1 to 30 days	49	4.9	12	3.4	37	5.5
31 to 60 days	92	9.1	14	4.0	78	11.7
61 to 90 days	99	9.8	13	3.7	86	13.0
91 to 120 days	107	10.6	27	7.8	80	12.0
121 to 150 days	113	11.2	32	9.2	81	12.2
151 to 180 days	54	5.3	31	8.9	23	3.5
181 days or more	343	34.0	193	55.9	150	22.7

Table B-6: Summary Statistics on Total Delays for Adjournments Requested by Aliens During First 180 Days of Custody

		All	in period	
			No	Yes
Total Delay	N	970	305	561
	Min	2.0	2.0	6.0
	Median	119.0	145.0	101.0
	Mean	116.3	135.3	105.9
	Max	269.0	239.0	269.0

Table B-7: Distribution of Total Delays for Adjournments Requested by Aliens During First 180 Days of Custody

	All		in period			
			No		Yes	
	N	Pct	N	Pct	N	Pct
All	1013	100.0	348	100.0	665	100.0
Total Delay						
None	143	13.9	39	11.2	102	15.3
1 to 30 days	52	5.1	12	3.4	40	6.0
31 to 60 days	115	11.4	24	6.9	91	13.7
61 to 90 days	133	13.1	30	8.6	100	15.1
91 to 120 days	146	14.5	42	12.1	104	15.7
121 to 150 days	169	16.6	65	18.7	103	15.5
151 to 180 days	143	14.1	67	19.3	76	11.5
181 days or more	116	11.5	69	19.8	47	7.1

Rebuttal Expert Statistical Report of
Dr. Chester I. Palmer

Alejandro Rodriguez et. al. v. Timothy S. Robbins, et al.
Civil Action No. CV 07-3239-TJH (RNBx)
Central District of California, Western Division

Dec. 14, 2012

Introduction

This report presents statistical analyses of events during the periods of custody of aliens who had been detained by U.S. Immigration and Customs Enforcement without an individualized bond hearing before an immigration judge for at least 180 days or more as of some date in the period from April 21, 2010, through April 21, 2011, and, as of some date within that period, were being held in facilities in the Central District of California. The report was prepared at the request of the attorneys for respondents in the litigation Alejandro Rodriguez et. al. v. Timothy S. Robbins, et al., Civil Action No. CV 07-3239-TJH (RNBx), filed in the Central District of California, Western Division.

I prepared an earlier report in this case dated October 12, 2012. My vita forms Appendix A to that report. The case list in that vita is still correct except that I have also testified by deposition in this matter. My earlier report lists on page 3 the data sources I used in my analyses. The analyses in this report use the same data sources plus a data file supplied by in discovery by Dr. Susan Long, petitioners' expert.

This report has three main purposes:

- As I discussed in my original report, the data sets produced by respondents for use in this litigation overrepresent class members with longer periods of detention. For my original report, I analyzed a subset of the data (what I called the "in-period" aliens) that corrected for this overrepresentation. As I commented then, correcting the overrepresentation generally had little effect on my results because of the types of analyses I performed. Dr. Long's report often analyzed lengths of detention, so correcting the overrepresentation has a substantial effect on many of those results, and it also has some effect on some of her other results. Thus, one purpose of this report is to show that extent of those effects and provide parallel values based on only the in-period aliens.
- Most of Dr. Long's analyses of lengths of detention tabulate only the mean number of days in detention for various groups. I think it is desirable to present additional information regarding the distribution of the lengths of detention, and I have done so in this report.
- I have also provided some information that puts the information on lengths of detention in the context of the results in my original report regarding delays requested by the aliens.

I. Selecting an Appropriate Sample for Analysis

In my previous report, I discussed at some length the choice of an appropriate sample for analysis in this litigation. I will include a brief summary of that discussion below, together with some additional consider-

ations; but I have also included my earlier discussion as Appendix A to this report.

According to the Third Amended Complaint:

> 105. Petitioners represent a class of all people within the Central District of California who 1) are or will be detained for longer than six months pursuant to the general immigration detention statutes pending completion of removal proceedings, including judicial review, 2) are not detained pursuant to one of the national security detention statutes at 8 U.S.C. 1226a and 8 U.S.C. 1531-37 and 3) have not been afforded a hearing to determine whether their prolonged detention is justified.
>
> 106. The class includes people who were present in an ICE detention facility in the Central District on or after the date on which the original complaint was filed . . .

The original complaint was filed on May 16, 2007, so the class time period extends from that date onward. On the other hand, it is my understanding that aliens were included in the data set produced in discovery and used in Dr. Long's expert report if they had been detained by U.S. Immigration and Customs Enforcement without an individualized bond hearing before an immigration judge for at least 180 days or more as of some date in the period from April 21, 2010 through April 21, 2011 and, as of some date within that period, were being held in facilities in the Central District of California. Thus, only a small proportion of the class

is included in the data set[1] and the data set itself is already a sample of the potentially relevant data. Unfortunately, the data set is not a representative sample of the class because it was selected in a way that makes inclusion of class members with long detention periods more likely than the inclusion of otherwise similar class members with shorter detention periods. To see that, note that aliens whose detention began early in the time period, say in 2007, are included in the sample only if they were still in detention on April 21, 2010; the data set does not include otherwise similar aliens who began their detention at the same time and were detained for at least six months, making them class members, but who were detained for less than two years and so were no longer in detention on April 12, 2010. For this reason, my earlier report emphasized analyses on those class members for whom the 181st day of detention fell in the time period for the data (April 21, 2010 through April 21, 2011). I refer to these class members as "in-period aliens."[2] Note that another way of describing this is to say that these aliens entered custody within the time period from October 23, 2009 (180 days before April 21, 2010) through October 23, 2010 (180 days

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[1] The period of one year represented in the data is only about 18% of the period from May 16, 2007 to the date of this report; and because the class includes future detainees, that proportion decreases daily.

[2] My earlier report also contains an appendix with tables for out-of-period aliens and for all aliens in the data set, in-period and out-of-period combined, so the reader can see the extent to which the choice of in-period aliens for analysis affects the results of the analyses.

before April 21, 2011). Because the set of in-period aliens contains all class members whose detention began during a specified period of time, it does not have the problem of overrepresenting aliens with longer detention periods. For a more detailed discussion, see Appendix A.

II. Comparing Analysis Results with Those in Dr. Long's Report

A. General Considerations

As discussed in the Introduction, one major purpose of this report is to provide results parallel to those provided in Dr. Long's report but that correct for the overrepresentation of class member with longer periods of detention as discussed in Section I above. In order to do so, I reproduce Tables 1 to 16 in her report using the data set that she supplied in discovery; I number those tables prefix "L-" to indicate that I used Dr. Long's data.[3] One major difference is that because of my opinion that it is more appropriate to perform analyses on the in-period aliens, as defined above, I provide information for each table separately for in-period aliens, for out-of-period aliens, and for all aliens in the data set. Dr. Long performed her analyses only for all aliens.[4]

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[3] Although Dr. Long and I performed our analyses on different data sets, the differences between the two data sets make little difference to the results. See Appendix B for additional information on this point, and also for a discussion of the reliability of the data set used in my analyses.

[4] With the exception of one trivial typographical error, I am able to verify the numbers in her report. In her Table 12, under "All

The second general difference between the tables in this report and those in Dr. Long's report applies only to those tables that show lengths of detention: Tables 2, 6, 11, 12, 15, and 16. She does not always supply the same information in such tables. In Table 2, she provides averages, lowest values, and highest values. In Tables 6, 11, 12 and 16, she supplies only the averages; in Table 15, she supplies the averages and the highest values. Her Table 3 supplies additional information about the distribution of detention times in Table 2, but the report does not supply such information for her other tables of lengths of detention. As discussed in the Introduction, I believe that it is desirable to present additional information regarding the distribution of the lengths of detention rather than just the mean, or mean, minimum, and maximum. Thus, all my tables of detention length supply the same information:

N	the number of cases in the row
Pct	the percentage of total cases in the table that are in this row
Mean	the mean (average) length of detention for cases in this row
Min	the shortest length of detention for cases in this row
P10	the 10th percentile length of detention for cases in this row (i.e., 10% were below this value, 90% were above it)

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cases" and "Applied for Relief" equal to "No," the number should be 360, not 362. Compare with her Table 11 above it.

P25 the 25th percentile length of detention for cases in this row

Median the central value, also called the 50h percentile; half of the lengths for cases in this row were below this value, half were above it.

P75 the 75th percentile length of detention for cases in this row

P90 the 90th percentile length of detention for cases in this row

Max the highest length of detention for cases in this row

B. An Example Comparing the Two Types of Tables

On the next page, I have reproduced Table 2 from Dr. Long's report and Table L-2 from Appendix C of this report for comparison. In this section, I compare and contrast the two sets of results and discuss the differences in interpretation.

Note that my table L-2 has three sections, one for "in_period No" (the out-of-period aliens), one for "in_period Yes" (the in-period aliens), and one for "All" (the complete data set). Many of my tables use this format, although some simpler tables place the three sets of results side by side.

As discussed above, the results in Dr. Long's Table 2 correspond to the "All" section of my table L-2. Thus, Dr. Long's average detention times of 381, 805, and 404

(days) appear in my table in the Mean column for the "All" section at the bottom. Similarly, her "Lowest" values appear in my Min column and her "Highest" values appear in my Max column. Thus, as noted earlier, when we calculate the same statistics, we get the same answer. Looking at the bottom section of my printout, the mean overall is 404 days (bottom row) and the median is 342 days. There is nothing wrong with giving the mean, but it would be an easy mistake for the reader to believe that half the values were below the mean of 404 days and half above it. In fact, the dividing line between the bottom half and the upper half is at the median of 342 days, about two months less than the mean; there are more values below the mean of 404 days than there are above it. The difference between the median and the mean is quite substantial; from 342 days to 404 days is an 18% increase. This difference is caused by the shape of the distribution of the lengths of detention. With a mean of 404 but values running from 180 to 1585, it is clear that the data are quite asymmetric (in the statistical language, they are skewed to the right, meaning that there is a short fat tail to the left and a long skinny tail to the right). In such cases, it is better to give the median along with, or in place of, the mean. As an example, consider yearly income, where a small number of people have incomes of many millions of dollars, but the mean is much less than half of that and incomes cannot go below zero. The Census Bureau generally tabulates median incomes, not mean incomes.[5] In this

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[5] For example, on the first page of Highlights in *Income, Poverty, and Health Insurance Coverage in the United States: 2010*, the word "median" occurs 18 times; neither "mean" nor "average"

case, much of the information on the distribution of detention lengths can be approximated from Dr. Long's Table 3, but she does not give tables parallel to Table 3 for her other tables of detention lengths.

Next, recall that the "All cases" values are biased in favor of longer detention lengths. First, note that of the 1,000 class members in Dr. Long's analysis, 352 (35.2%) were out-of-period and 648 (64.8%) were in-period. Thus, the out-of-period aliens responsible for the bias form a substantial part of the data set she analyzed. To see the effect of that bias, compare the three parts of my table; for simplicity, I will only consider the bottom row (still detained equal to "All") of each part. I consider the most appropriate values those for the in-period aliens in the

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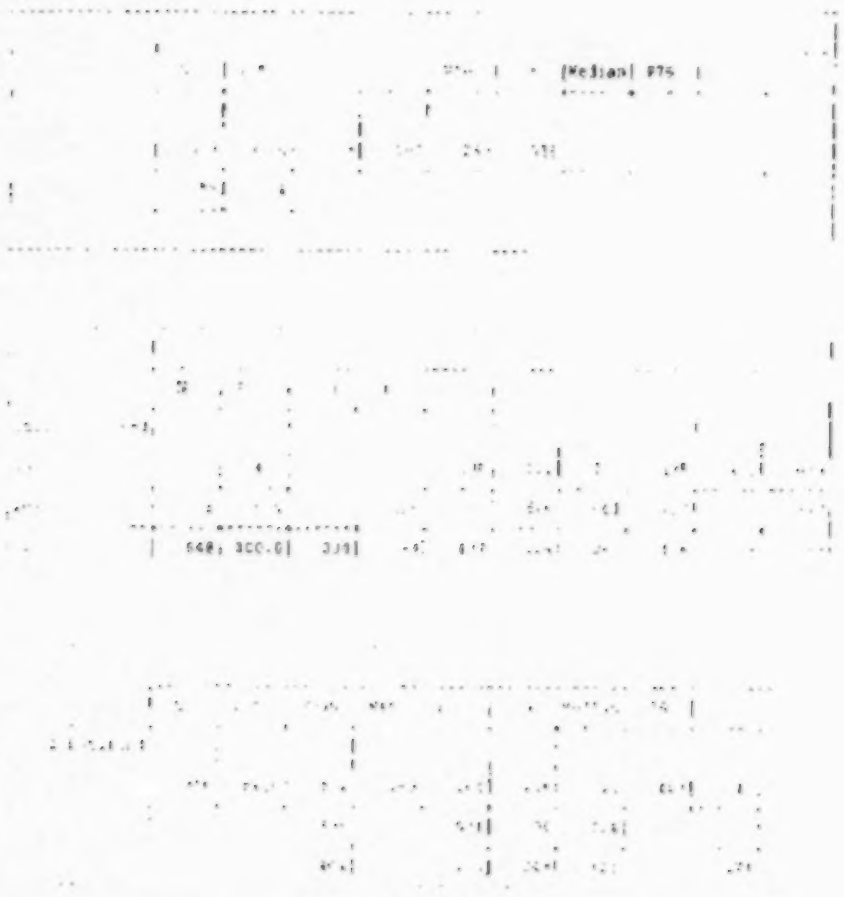
occurs at all. The report is at http://www.census.gov/hhes/www/income/data/incpovhlth/2010/index.html (visited December 12, 2012); click on Report, and go to page 5 for the "Highlights" section.

Table 2 from Dr. Long's Report
Average Days of Detention by Detention Category

Detention Category	Detention Days Average	Lowest	Highest
No longer detained	381	180	1,310
Still detained	805	558	1,585
All cases	404	180	1,585



middle of the table. There the median is 286 days and the mean is 334 days. Dr. Long's values (those in the bottom part of the table for the "All" group") have

median 342 days and mean 404 days. Those last values are higher than those for the in-period aliens because the values for the out-of-period aliens are higher still, with median 469 days and mean 531 days. These differences are not surprising because, as discussed above, the "All" group overrepresents aliens with long detentions. The differences between the in-period group and the "All" groups are quite substantial, both in the means (from 334 days to 404 days is a 21% increase) and in the medians (from 286 days to 342 days is a 20% increase).

The selection of the "right" number for a "typical" length of detention depends on the use to be made of the statistic. Note, though, that in this case the range of possible values is large; it goes from 286 days (the median for the in-period aliens) to 404 days (the mean for the complete data set), and from 286 days to 404 days is a 41% increase. The user of these statistics should give careful consideration to which measure is most appropriate for a particular purpose. In my opinion, if the purpose is solely to provide a number to serve as a "typical" value in an asymmetric distribution, the median is a better choice than the mean. Also, in my opinion, the values for the in-period aliens come from a more appropriate sample in terms of generalizing to the broader population of all class members. Note, by the way, that all these values (and all other values throughout both Dr. Long's report and my report) describe detention lengths only for class members; that is, for aliens detained at least 180 days. Aliens detained for shorter periods are not included in the data at all.

Finally, consider a point that Dr. Long makes in her report: Because some of the class members were still in detention, the means that she calculated are underestimates of the means that she would obtain if she had complete information on the lengths of detention. The statement is correct, but it is interesting to note that in this table the problem has no effect on the medians and very little effect on many of the other statistics. To see why, consider the middle section (the in-period aliens) of Table L-2. The row for "Still Detained" shows a minimum detention length of 558 days, so additional information could increase only those values that are already 558 days or more. Comparing that with the "All" row shows that additional information could only affect the mean, the 90th percentile, and the highest value because 558 days is already beyond all the other percentiles in the row; the median does not change. Also, in this particular table, the additional length of detention would need to be quite extreme to have a large effect even on the mean because only 5.4% of the detentions are ongoing. For example, if on the average those detentions lasted an additional year, the mean would increase by .054 years, or about 20 days. Of course, still longer stays would affect the mean by more; and there are other tables where the proportion of those still in detention is higher and therefore the additional lengths of detention might have larger effects on the mean.

C. Differences in Interpretation for Other Tables

In this section, I will review the tables in Dr. Long's report and the interpretation of her results as it is affected by the results in Appendix C of this report. Although I will briefly mention each table, I obviously

cannot discuss every number; so I will concentrate on those situations where I believe the new tables have the most important effects on the interpretation of the results.

Looking overall, I would summarize these differences as follows: The two issues (in-period versus all and median versus mean) have substantial effects on the results of analyses of detention length. For other tables, the in-period versus all issue matters, but the median versus mean distinction does not because the tables involve only counts and percentages. For those other tables, the in-period versus all has some effect on the percentages for types of court proceedings (out-of-period aliens have more), but not much effect on other percentages such as the percentages of those applying for or receiving relief.

Dr. Long's Table 1 shows counts and percentages for how many of the class members are still detained. The proportion is almost exactly the same for in-period aliens and out-of-period aliens, and thus also for all aliens in the data.

I have discussed Dr. Long's Table 2 in detail above. Her Tables 3 and 4 provide additional detail on the distribution of lengths of detention. Because they tabulate probabilities, the mean vs. median issue does not apply to them. But it does make a difference whether the table includes all those in the data set or just the in-period aliens because the full data set includes the out-of-period aliens, who generally have longer detention periods. For example, only 33% of the in-period aliens were detained 12 months or more

(i.e., 360 days or more), as compared with 47% of all aliens in the data set, the figure in Dr. Long's Table 3.

Dr. Long's Table 5 give counts and percentages for how many class members have cases involving various courts. Unsurprisingly, the out-of-period aliens, who are included in the data set only if they have long periods of detention, tend to involve more courts. For example, 30% of the in-period aliens have cases involving BIA court proceedings, compared with 46% of the out-of-period aliens and 36% of the aliens in the full data set. So, if one agrees that the results for the in-period aliens are most appropriate, Dr. Long's table, which uses the full data set, somewhat overstates the proportion of class members with BIA court proceedings and Ninth Circuit Proceedings.

Dr. Long's Table 6 shows detention length by type of court proceedings. One oddity of this table is that it does not show the 60 cases that do not follow any of the three patterns of court involvement in her tables, even though they are included in her "All cases" line. For this table, there are the same kind of differences between in-period aliens and the full data set, and between means and medians, as I discussed above for Table 6. Thus, for class members with immigration court proceedings only, Dr. Long shows a mean length of detention of 330 days; the median for this group is 294 days. For the in-period aliens in this group, the mean is 292 days and the median is 260 days. The difference between the median of the in-period group and the mean of the all group is substantial, although a bit smaller than in Table 2; from 260 days to 330 days is a 27% increase. For the in-period aliens, the 25th percentile of this group is 217 days, so 25% of them

had detention lengths from 180 days to 217 days. There are similar differences for the other groups in the table, although the pattern remains that those with more proceedings do, as expected, have longer periods of detention.

Dr. Long's Tables 7-10 show percentages for applications for relief and cases where relief was granted. There is little difference between the percentages for in-period and out-of-period aliens.

Dr. Long's Table 11 shows detention length by whether the class member filed an application for relief. Here again, there are substantial differences between in-period aliens and the full data set, and between means and medians. Thus, for those not filing any application for relief, her table shows a mean of 360 days; for in-period aliens only, the mean was 288 days and the median was 253 days. From 253 days to 360 days is a 42% increase. For those who did file applications for relief, her table shows a mean of 421 days; for in-period aliens only, the mean was 352 days and the median was 303 days. From 303 days to 421 days is a 39% increase. Thus, the combined effects on the sample and the choice of mean and median are very similar in both cases to the 41% increase in Table 2.

Dr. Long's Table 12 shows detention length by types of proceedings and whether the class member applied for relief. Note that, because of the number of combinations shown in the table, Table L-12 in Appendix C extends over three pages (although some of the numbers duplicate those in Table 6 and Table 11). Because of the complexity here, I am not going to sum-

marize the situation except to note that there are the same kind of between in-period aliens and the full data set, and between means and medians, as in the previous tables, although the size of the effect varies from one group to another.

Dr. Long's Table 13 shows counts and percentages for case outcomes and her Table 14 shows the basis on which class members won their cases. In general, there are few dramatic differences between in-period aliens and out-of-period aliens in these tables.

Dr. Long's Table 15 shows lengths of detention by outcome. Again, there are the usual differences between in-period aliens and the full data set, and between means and medians. For simplicity, I will discuss only one in detail. For aliens who won their cases, Dr. Long's table shows a mean length of detention of 342 days. For in-period aliens who won their cases, the mean length of detention was 286 days and the median was 257 days. As usual, the overall difference is substantial; from 257 days to 342 days is a 33% increase.

Finally, Dr. Long's Table 16 shows the lengths of detention by type of proceedings for just those aliens who won their cases. Again, there are substantial differences between in-period aliens and the full data set, and between means and medians. It is also worth noting that some of these averages should be viewed with caution because they are based on very small numbers of individuals; there were 227 aliens who won their cases overall, but only 28 who won after BIA and immigration proceedings and only 6 who won after Ninth Circuit, BIA, and Immigration Court proceed-

ings, and the counts are even smaller for just in-period aliens in these groups. Averages (or medians, for that matter) based on such small samples may not be reliable estimates of the values that would be obtained for the entire class.

III. More on the Lengths of Delays Attributable to Adjournments Requested by the Aliens

In this section, I provide information on lengths of detention in the context of the results in my original report regarding delays attributable to requests by the aliens.[6] Table 4 and 5 of my first report gave information on the lengths of the delays attributable to adjournments requested by the in-period aliens, and Tables B-4 and B-5 gave similar information for out-of-period aliens and for all aliens in the data set.

The table below gives information on the proportion of the total detention time for each alien attributable to requests by the alien, where total time in detention is calculated as described in Section 2 of Appendix B. Thus, for half of the in-period aliens, 34.2% or more of their detention time was spent in delays attributable to the alien. That proportion was 50% or more for 28.7% of the in-period aliens, although that number cannot be read from the table below.

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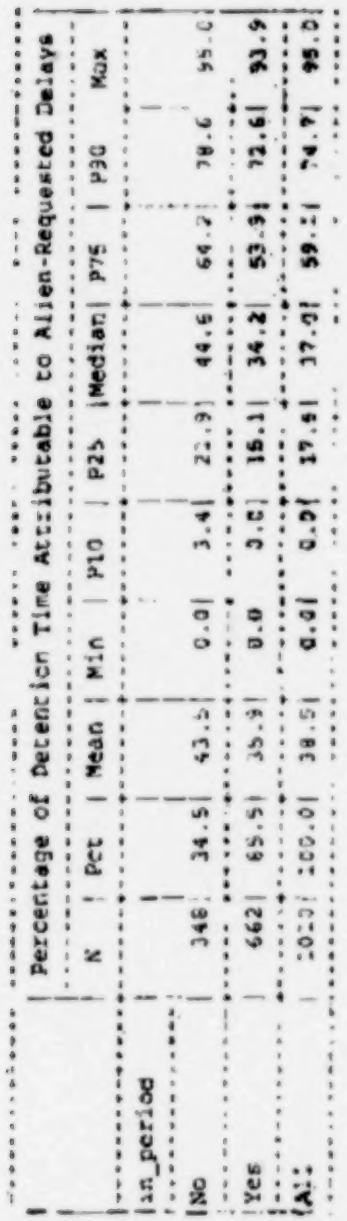
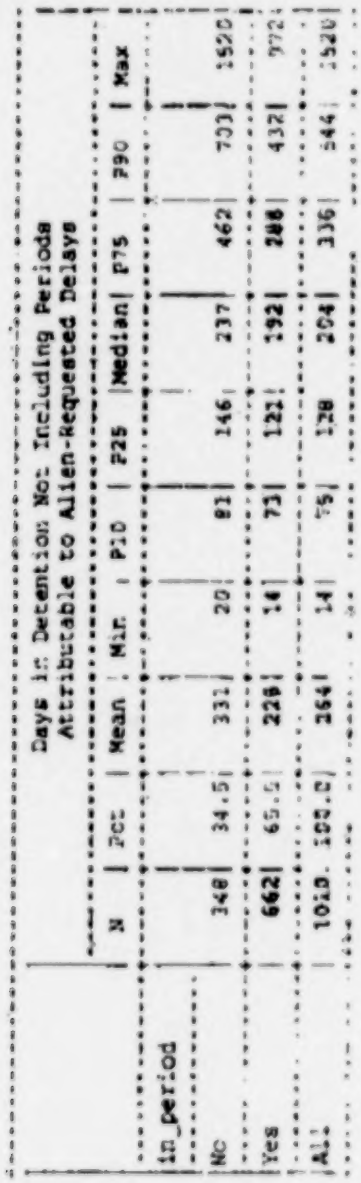
[6] In this section, I use the phrase "delays attributable to requests by the alien" to mean the delay between the date of a hearing that was adjourned at the request of the alien to the next hearing date for the same alien. For more detail on the conventions I used in calculating the lengths of the delays, see pages 7 and 8 of my earlier report.



in_period	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
No	348	34.5	43.5	0.0	3.4	20.9	44.6	64.2	78.6	95.0
Yes	662	65.5	35.9	0.0	3.0	15.1	34.2	53.9	72.6	93.9
All	1010	100.0	38.5	0.0	3.0	17.6	37.0	59.2	74.7	95.0

The length of time in detention that was NOT attributable to alien-requested delays may also be of some interest. The table below gives information on the distribution of those lengths of time. For in-period aliens, the 25th percentile was 121 days and the median was 192 days. Thus, EXCLUDING time attributable to alien-requested delays, 25% of the in-

period aliens spent 121 days or less in detention and half of the in-period aliens spent 192 days or less in detention. The total detention time EXCLUDING time attributable to alien-requested delays was under 180 days for 45.9% of the in-period aliens, although that number cannot be read from the table below.



in_period	Days in Detention Not Including Periods Attributable to Alien-Requested Delays									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
No	348	34.5	331	20	81	146	237	462	733	1520
Yes	662	65.5	228	14	73	121	192	288	432	772
All	1010	100.0	264	14	75	128	204	336	544	1520

IV. Statement of Compensation and Signature

The author of this report is employed by ERS Group, which currently bills his time at $475 per hour.

Dec. 14, 2012 — Date

/s/ CHESTER I. PALMER
CHESTER I. PALMER

Appendix A

Discussion of Appropriate Sample from my Original Report

[Reproduced JA 140-143, *supra*]

* * * * *

Appendix B

Information about the Analysis Data Sets

1. The Accuracy of My Analysis Data Set

At my deposition in this matter, I was asked a number of questions about situations in which there appeared to be disagreements between the entries in the spreadsheet AC_Delays, which formed the principal basis for my analysis data set, and the entries in the Action Table of an EOIR Microsoft Access database also provided by respondents in discovery. At the deposition, I pointed out that the apparent discrepancies were only a problem for my analyses if, in fact, the data I used were incorrect.

I have reviewed the declaration of Benjamin B. McDowell dated December 14, 2012. Mr. McDowell is an employee of the Executive Office of Immigration Review who routinely uses the EOIR CASE database and who used it to prepare the two data sets discussed above. McDowell Dec. ¶¶1-3. He states that the information in my analysis database on the dates of delays and the reasons for those delays comes from the Schedule Table, the database table that is used to record and analyze that information. Id. at ¶¶4-6. He further states that the Action table is maintained

for the purpose of auditing the addition of information to the CASE database and is designed in such a way that there is no easy way to match the information in that table with the information in the Schedule Table; therefore, the fact that the records do not match does not cause him to doubt the reliability of the information in the Schedule Table from which my analysis database is derived. Id. at ¶7. Thus, the apparent disagreements provide no reason for me to doubt the reliability of results based on my analysis database, either the results in my previous report or those presented in this report.

2. Disagreements between Dr. Long's and My Analysis Data Sets

In our initial reports, Dr. Long and I both explained that we excluded certain observations from our analyses. Dr. Long's analysis data set included 1,000 aliens; mine included 1,010. Dr. Long's data set contained 11 aliens that mine did not; mine contained 21 aliens that hers did not; and there were 989 aliens in both data sets. So the two data sets had about 98-99% of the same individuals. Also, I had more recent information on a small number of aliens, and I filled in some missing dates and made a few corrections in the dates. It would be reasonable to want to know how much the differences between data sets might have affected the results.

My earlier report provided counts and percentages involving the numbers of adjournments requested by the aliens. Dr. Long's report did not address those issues. Dr. Long's report provided information on the lengths of detention and on the types and outcomes of

relief applications and court proceedings. My report did not address those issues. To investigate the effects of the differences between the data sets, it is necessary to perform the same analyses on both data sets to see the extent to which they agree. Because my report presented only counts and percentages, and because 98% of the aliens in my data set were also in Dr. Long's data set (where they formed 99% of her data), the results of my analyses would have changed little if I had run them on the aliens in her data set. The same is true of the percentages in her report. On the other hand, it is possible that the means might be somewhat different because a mean can be affected substantially by a few very large observations. (This fact is one reason for preferring the median in many situations.) So I reran my equivalent of Dr. Long's Table 2 on my data. The most recent date that an alien left custody in my data set was September 25, 2012. So I treated that as the last day of detention for aliens still in custody, in parallel to the way that Dr. Long treated April 28, 2012 as the last day of detention for aliens still in custody in her data set.

The parts of the two tables for in-period aliens and for all cases are on the next page.[7] Note that because some aliens have moved from still detained in Dr. Long's analyses to not still detained in my analyses, we should not expect the "Yes" and "No" rows to be comparable. For the "All" row for in-period aliens, Dr. Long's data set gives a mean of 334 days and a median of 286 days; my data gives a mean of 347 days and a

[7] The part of the table for out-of-period aliens is of little independent interest, so I have omitted it for simplicity.

median of 294 days. For all aliens in the data set, Dr. Long's data gives a mean of 404 days and a median of 342 days; my data set gives a mean of 416 days and a median of 343 days. So the differences in the means between the two data sets are small compared to the differences between the mean and median or between the difference between in-period aliens and all aliens; as expected from the fact that my data set extends later in time, the values from my data set are slightly larger than those from Dr. Long's data set. The medians are closer still. In fact, for the overall data set, the values at the 10th percentile, 25th percentile, and median all differ by two days or less, and the difference at the 75th percentile is only 8 days. Except for the largest values (the 90th percentile and maximum), which are affected by the additional time added for those still in custody, the differences are small. In general, it seems unlikely that the difference in data sets is of any practical importance in the interpretation of the results.

Results from Dr. Lucy's Data

in_period Yes

	Length of Detention (days)									
Still Detained	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
No	613	94.6	334	180	196	233	278	375	498	933
Yes	35	5.4	635	558	569	586	643	767	856	893
All	648	100.0	334	180	197	224	286	408	558	893

All

	Length of Detention (days)									
Still Detained	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
No	934	94.4	381	180	204	246	330	463	617	1310
Yes	55	5.6	805	558	571	604	724	934	1116	1585
All	989	100.0	401	180	205	249	342	499	673	1585

Results from My Data

in_period Yes

	Length of Detention (days)									
Still Detained	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
No	643	97.1	312	180	197	223	267	401	530	933
Yes	19	2.9	554	313	333	354	537	744	1031	1313
All	662	100.0	347	180	197	224	268	415	567	1031

All

	Length of Detention (days)									
Still Detained	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
No	983	97.0	401	180	208	247	336	492	680	1695
Yes	31	3.0	852	313	335	402	513	1084	1232	1585
All	1014	100.0	416	180	205	253	343	509	735	1685

Appendix C

Tables Using Dr. Long's Data Parallel to Tables 1 to 16 in Her Report

Table L 1
Cases by Detention Category as of April 28, 2012

	in_period					
	No		Yes		All	
	Count	Pct	Count	Pct	Count	Pct
Detention Category						
No longer detained	333	94.6	613	94.6	946	94.6
Still detained	19	5.4	35	5.4	54	5.4
All	352	100.0	648	100.0	1000	100.0

Table L 2
Days of Detention by Detention Category

in_period No

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Still Detained										
No	333	94.6	509	187	280	336	453	608	827	1310
Yes	19	5.4	1026	562	571	933	1026	1171	1304	1585
All	352	100.0	533	187	282	346	469	651	911	1585

in_period Yes

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Still Detained										
No	613	94.6	316	180	196	222	278	375	490	839
Yes	35	5.4	695	558	569	584	681	767	956	987
All	648	100.0	334	180	197	224	286	408	558	887

All

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Still Detained										
No	946	94.6	381	180	204	246	330	463	617	1310
Yes	54	5.4	805	558	573	604	726	934	1118	1585
All	1000	100.0	404	180	205	249	342	499	693	1585

Table L-1
Cases by Detention Period

	In period											
	No				Yes				All			
	Detention That Long?				Detention That Long?				Detention That Long?			
	No		Yes		No		Yes		No		Yes	
Detention Period	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct
06 months or more	0	0	352	100.0	0	0	648	100.0	0	0	1000	100.0
07 months or more	31	8.9	349	91.1	112	17.3	536	82.7	135	13.5	865	86.5
08 months or more	121	34.4	340	96.6	209	32.9	441	68.1	319	31.9	781	78.1
09 months or more	27	7.7	325	92.3	289	44.3	361	55.7	316	31.6	686	68.6
10 months or more	52	14.8	300	85.2	357	55.2	291	44.9	409	40.9	591	59.1
11 months or more	77	21.9	275	78.1	396	61.1	252	38.9	473	47.3	527	52.7
12 months or more	97	27.6	254	72.4	434	67.0	214	33.0	531	53.1	469	46.9
13 months or more	129	36.6	222	63.4	470	72.5	178	27.5	599	59.9	401	40.1
14 months or more	149	42.3	203	57.7	498	76.9	150	23.1	647	64.7	353	35.3
15 months or more	163	46.3	189	53.7	529	81.6	119	18.4	691	69.1	309	30.9
16 months or more	182	51.7	170	48.3	545	84.1	103	15.9	727	72.7	273	27.3
17 months or more	192	54.5	160	45.5	565	87.2	83	12.8	757	75.7	243	24.3
18 months or more	208	59.1	144	40.9	577	89.0	71	11.0	785	78.5	215	21.5
24 months or more	282	80.1	70	19.9	632	97.5	16	2.5	914	91.4	86	8.6

Notes: A "month" is defined as a 30-day period.
Some class members were still detained at the end of the analysis period, so the counts for 24 months may be underestimates.

Table L-4
Probability of Continued Detention

In period No

	Still detained at 12 months				Still detained at 18 months				Still detained at 24 months			
	No		Yes		No		Yes		No		Yes	
	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct
Start per												
Those detained 07 months	84	26.9	256	73.1	215	81.4	134	38.4	219	59.3	70	37.2
Those detained 08 months	69	25.0	255	75.0	226	82.6	134	39.4	220	79.6	36	20.4
Those detained 09 months	70	21.5	253	78.5	231	84.8	134	42.2	255	78.5	70	21.5
Those detained 10 months	65	25.3	253	87.3	169	85.3	134	46.7	238	86.7	39	23.3
Those detained 11 months	28	9.8	224	83.2	161	58.3	134	48.7	205	74.5	70	25.5
Those detained 12 months	31	9	253	120.5	121	47.5	134	52.5	125	75.5	70	37.5

In period Yes

	Still detained at 12 months				Still detained at 18 months				Still detained at 24 months			
	No		Yes		No		Yes		No		Yes	
	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct
Start per												
Those detained 07 months	333	69.1	219	30.9	425	86.9	71	13.2	520	97.8	24	4.0
Those detained 08 months	327	61.6	214	46.5	190	63.3	71	14.1	425	96.4	24	5.6
Those detained 09 months	143	43.7	214	59.3	230	80.3	71	19.3	345	95.6	18	4.4
Those detained 10 months	77	26.8	210	73.2	223	78.5	71	20.4	335	94.5	24	5.5
Those detained 11 months	34	19.1	214	84.9	183	71.8	71	20.2	236	93.7	17	6.3
Those detained 12 months	0	0	214	120.0	143	66.8	71	33.2	230	92.9	24	7.1

All

	Still detained at 12 months				Still detained at 18 months				Still detained at 24 months			
	No		Yes		No		Yes		No		Yes	
	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct	N	Pct
Start per												
Those detained 07 months	418	49.2	469	53.3	640	76.4	205	23.3	749	90.3	94	9.9
Those detained 08 months	342	58.3	469	60.1	536	73.8	205	26.2	635	89.3	98	11.0
Those detained 09 months	317	31.6	469	68.4	431	72.1	205	29.5	608	87.5	66	12.5
Those detained 10 months	122	20.6	463	79.4	388	69.8	205	34.7	555	85.4	66	14.6
Those detained 11 months	62	13.3	463	89.0	332	61.3	205	38.9	441	83.9	84	16.3
Those detained 12 months	31	9	463	120.0	264	56.8	205	43.7	383	81.7	84	18.2

Note: A "month" is defined as a 30-day period.

Table L-5
Court Involvement in Cases

	in_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
All	352	100.0	648	100.0	1000	100.0
Immigration Court Proceeding(s)						
No	23	6.5	34	5.2	57	5.7
Yes	329	93.5	614	94.8	943	94.3
BIA Court Proceeding(s)						
No	189	53.7	455	70.2	644	64.4
Yes	163	46.3	193	29.8	356	35.6
9th Circuit Court Proceeding(s)						
No	257	73.0	546	84.3	803	80.3
Yes	95	27.0	102	15.7	197	19.7

Table E-6
Days of Detention by Court Involvement

In period 89

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Proceedings										
1: Immigration Court Only	164	54.3	422	207	266	304	359	491	648	2092
2: BIA and Immigration	80	26.5	633	216	283	396	519	646	759	1304
3: 9th Cir, BIA, and Imm	27	8.9	778	241	453	579	726	979	1333	1585
Other	29	9.6	585	329	335	359	468	893	893	1248
ALL	352	100.0	531	187	292	346	409	658	911	1948

In period Two

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Proceedings										
1: Immigration Court Only	447	69.0	282	120	156	214	260	343	436	841
2: BIA and Immigration	98	11.6	383	1931	274	276	354	499	611	613
3: 9th Cir, BIA, and Imm	46	11.7	556	160	338	423	573	648	796	884
Other	37	6.2	234	180	184	193	219	312	421	591
ALL	618	100.0	336	180	197	224	286	358	559	887

All

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Proceedings										
1: Immigration Court Only	611	63.7	333	180	202	231	234	355	499	1072
2: BIA and Immigration	156	15.6	446	180	253	296	421	547	837	1304
3: 9th Cir, BIA, and Imm	133	13.3	667	180	377	534	621	824	1009	1585
Other	66	6.6	393	180	194	217	335	494	752	1082
ALL	1007	100.0	404	180	235	249	342	499	673	1585

Table L-7A
Whether Filed Relief Application

	In period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
Applied for Relief						
No	105	29.8	182	28.1	287	28.7
Yes	247	70.2	466	71.9	713	71.3
All	352	100.0	648	100.0	1000	100.0

Table L-7B
Whether Relief Granted by IJ

	In period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
Granted Relief						
No	147	57.6	295	63.3	462	64.8
Yes	98	32.4	171	36.7	251	35.2
All	345	100.0	466	100.0	713	100.0

Table L-7C
Whether Relief Granted is Final Outcome

	In period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
Granted Final Relief						
No	7	8.0	15	8.8	22	8.8
Yes	81	31.3	156	91.2	229	91.2
All	88	100.0	171	100.0	251	100.0

Notes: Final outcome still pending in 12 cases granted relief by IJ.
In 10 cases, initial decision was overturned or alien left country for other reasons

Table I-8
Relief Applications Filed by Type

	in_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
Did not File for Relief						
None	105	29.8	182	28.1	287	28.7
All	105	29.8	182	28.1	287	28.7
Filed for Relief						
Only applying for NACARCAT	8	2.3	20	3.1	28	2.8
Other types of applications	141	40.1	288	44.4	429	42.9
EOIR 42A applications filed	98	27.8	158	24.4	256	25.6
All	247	70.2	466	71.9	713	71.3
All	352	100.0	648	100.0	1000	100.0

Table I-9
Results of Applications for Cancellation of Removal under 240A(a)

	in_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
Granted Relief by IJ						
No	52	53.1	76	48.1	128	50.0
Yes	46	46.9	82	51.9	128	50.0
All	98	100.0	158	100.0	256	100.0

Table I-10A
Whether Filed for Relief (Excluding Those Filing Only for Withholding of Removal and/or CAT)

	In_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
Filed for Relief						
No	113	32.1	202	31.2	315	31.5
Yes	239	67.9	446	68.8	685	68.5
All	352	100.0	648	100.0	1000	100.0

Table I-10B
Whether Relief Granted by IJ
Among Those Who Filed for Relief (Excluding Those Filing Only for Withholding of Removal and/or CAT)

	In_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
grt relief2						
No	169	70.7	294	65.9	463	67.6
Yes	70	29.3	152	34.1	222	32.4
All	239	100.0	446	100.0	685	100.0

Table I-10C
Whether Relief Granted is Final Outcome Among Those Granted Relief by IJ
Among Those Who Filed for Relief (Excluding Those Filing Only for Withholding of Removal and/or CAT)

	In_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
won relief2						
No	3	4.3	3	2.0	6	2.7
Yes	67	95.7	149	98.0	216	97.3
All	70	100.0	152	100.0	222	100.0

Table 3.11
Detention Times by Whether Application for Relief Filed

In period No

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Filed For Relief										
No	105	29.8	434	187	257	310	384	531	960	1304
Yes	247	70.2	561	217	294	377	505	692	983	1665
All	352	100.0	531	187	282	344	459	651	911	1585

In period Yes

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Filed For Relief										
No	182	28.2	208	160	182	210	253	316	426	759
Yes	466	71.9	352	188	199	232	303	433	668	887
All	648	100.0	434	188	197	224	285	408	558	887

All

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
Filed For Relief										
No	287	28.7	362	160	188	227	299	459	591	1304
Yes	713	71.3	421	160	213	262	347	523	796	1585
All	1000	100.0	404	160	205	249	340	499	673	1585

Table E-12
Detention Times by Type of Proceedings and Whether Filed for Relief

In period No

	Length of Detention (days)								
	N	Pct	Mean	Min	P10	P25	(Median)	P75	P90	Max
I: Immigration Court Only										
Did not File for Relief	46	13.1	337	183	225	268	315	383	456	574
Filed for Relief	126	36.2	431	237	303	321	413	534	671	1032
All	304	87.3	422	197	265	304	382	484	643	1232
2: ICE and Immigration										
Did not File for Relief	13	3.7	453	216	264	310	387	526	562	1304
Filed for Relief	56	16.6	551	238	295	452	534	687	959	992
All	68	20.3	532	216	280	394	519	644	789	1304
3: ICE, CBP, BIA, and Fed										
Did not File for Relief	44	5.8	688	285	397	483	685	1021	1258	2304
Filed for Relief	61	15.1	814	432	576	625	739	978	1133	1565
All	73	21.9	776	281	457	579	726	949	1133	1565
4: Other										
Did not File for Relief	42	8.3	589	329	335	369	495	844	974	1982
Filed for Relief	1	0.2	330	330	330	330	330	330	330	330
All	43	8.5	580	329	335	369	468	831	971	1982
All										
Did not File for Relief	105	26.0	484	187	257	310	384	531	660	1304
Filed for Relief	244	73.2	561	217	294	377	506	672	901	2585
All	332	100.0	531	187	283	346	469	651	831	1585

«Table continues on next page»

Table 6.12 (continued)
Detention Times by Type of Proceedings and Whether Filed for Relief

in period Yes

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
1: Immigration Court Only										
Did not File for Relief	113	19.3	258	146	180	205	236	287	340	625
Filed for Relief	335	59.9	303	146	196	222	272	343	445	933
All	448	79.2	292	146	195	219	263	340	435	931
2: BIA and Immigration										
Did not File for Relief	22	3.9	307	182	227	255	293	350	416	450
Filed for Relief	56	10.3	409	189	236	276	387	500	642	800
All	80	13.8	383	189	227	276	354	473	563	800
3: 9th Cir BIA, and Imm										
Did not File for Relief	14	2.5	522	148	297	415	549	649	841	791
Filed for Relief	47	9.6	566	193	436	532	582	669	824	837
All	76	13.7	556	188	405	474	573	661	799	837
Other										
Did not File for Relief	34	5.9	205	131	139	239	267	336	423	591
Filed for Relief	3	0.5	185	190	190	190	192	199	199	199
All	37	6.7	224	190	188	199	229	336	423	591
All										
Did not File for Relief	183	28.1	284	146	192	214	252	336	423	759
Filed for Relief	466	71.9	357	146	199	232	303	431	569	837
All	648	122.0	331	146	197	224	285	404	558	837

(Table continues on next page)

Table 5.22 (continued)
Detention Times by Type of Proceedings and Whether Filed for Relief

In general All

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
1: Immigration Court Only										
Did not File for Relief	124	15.6	321	100	195	211	253	322	468	926
Filed for Relief	673	82.3	346	100	203	240	307	422	531	3892
All	831	83.1	330	100	201	231	294	395	499	1892
2: BIA and Immigration										
Did not File for Relief	35	1.8	161	102	107	145	215	434	536	1304
Filed for Relief	121	12.2	473	100	259	335	421	587	718	922
All	156	15.6	448	100	262	296	421	547	693	1324
3: 9th Cir, BIA, and Imm										
Did not File for Relief	38	1.8	620	108	159	457	562	715	1239	1908
Filed for Relief	115	11.5	603	103	301	560	658	808	907	1585
All	153	15.3	667	108	377	529	621	824	1034	1585
Other										
Did not File for Relief	56	5.6	405	101	193	233	336	481	633	1062
Filed for Relief	4	0.4	234	159	162	184	194	284	322	370
All	60	6.0	393	100	190	217	335	454	752	1062
All										
Did not File for Relief	287	28.7	360	100	138	227	239	439	531	1304
Filed for Relief	713	71.31	421	100	213	252	347	529	736	1585
All	1000	100.0	404	100	205	243	342	499	673	1585

Table L-13
Outcomes of Cases as of April 28, 2012

	in_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
outcome						
Won case	87	24.7	176	27.2	263	26.3
Case still pending	58	16.5	102	15.7	160	16.0
Deportation ordered (not departed)	19	5.4	68	10.5	87	8.7
Voluntary departure	12	3.4	34	5.2	46	4.6
Removal	176	50.0	268	41.4	444	44.4
All	352	100.0	648	100.0	1000	100.0

Table L-14
Basis for Winning Case

	in_period					
	No		Yes		All	
	N	Pct	N	Pct	N	Pct
Basis						
Case terminated	14	16.1	20	11.4	34	12.9
Individual won case	73	83.9	156	88.6	229	87.1
All	87	100.0	176	100.0	263	100.0

Table 5-15
Detention Times by Outcome

In period 5)

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
New case	97	24.9	456	21	300	378	429	562	649	689
Case still pending	58	14.9	651	247	285	340	440	916	1233	1382
Deportation ordered (not departed)	19	5.4	690	248	300	439	569	826	1048	1139
Voluntary departure	12	3.4	377	283	286	289	369	437	456	591
Removal	230	58.9	918	2261	333	384	485	656	877	1113
All	358	100.0	511	1971	302	366	469	691	911	1385

In period Two

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
New case	376	97.2	286	189	283	216	257	336	431	524
Case still pending	102	15.9	459	183	261	248	436	678	759	887
Deportation ordered (not departed)	68	10.5	468	198	263	249	384	647	583	754
Voluntary departure	31	5.3	291	188	263	282	318	356	448	581
Removal	368	62.8	319	186	282	278	287	330	496	937
All	643	100.0	338	186	297	224	266	428	648	937

All

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
New case	953	21.3	382	189	197	224	258	421	548	648
Case still pending	428	18.2	566	197	227	283	502	715	938	1386
Deportation ordered (not departed)	87	8.7	615	188	225	262	385	696	604	1139
Voluntary departure	45	4.5	335	188	188	224	270	381	435	582
Removal	456	44.8	194	188	209	250	339	495	661	1238
All	1988	100.0	408	188	205	243	362	438	677	1385

Table 1.18
Detention Times for Class Members who won Case by Type of Proceedings

In_period %

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
1: Immigration Court Only	88	78.3%	430	246	288	332	401	506	620	764
2: BIA and Immigration	16	18.6%	579	216	320	412	536	720	825	848
3: 9th Cir, BIA, and Imm	3	3.5%	426	387	387	389	435	462	483	483
Other	1	1.1%	335	335	335	335	335	335	335	335
All	87	100.0%	456	216	288	346	429	563	659	848

At_period Yes

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
1: Immigration Court Only	155	90.1%	370	180	182	223	282	379	497	587
2: BIA and Immigration	12	6.8%	436	180	262	312	390	524	548	705
3: 9th Cir, BIA, and Imm	4	2.3%	435	362	369	402	426	459	508	540
Other	1	0.6%	180	180	180	180	180	180	180	180
All	172	100.0%	386	180	190	224	287	386	491	706

All

	Length of Detention (days)									
	N	Pct	Mean	Min	P10	P25	Median	P75	P90	Max
1: Immigration Court Only	227	85.3%	339	180	185	222	293	391	499	764
2: BIA and Immigration	28	10.5%	509	180	216	358	532	673	743	848
3: 9th Cir, BIA, and Imm	6	2.3%	426	362	365	389	431	476	502	540
Other	2	0.8%	262	180	180	180	262	335	335	335
All	263	100.0%	369	180	187	224	308	413	518	706

Declaration of Ahilan T. Arulanantham

I, Ahilan Arulanantham, hereby declare:

1. I am the Deputy Legal Director of the American Civil Liberties Union of Southern California, a senior staff attorney for the ACLU Immigrants' Rights Project, and counsel of record for Petitioners in *Rodriguez v. Robbins*, CV 07-3239-TJH (RNBx) ("*Rodriguez*"). This declaration is being offered in support of Petitioners' Motion for Summary Judgment or, in the Alternative, Summary Adjudication and in opposition to any Cross-Motion filed by Respondents. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows.

Overview

2. For purposes of the statements that follow, I refer to the "studied class members" as the approximately 1,000 individuals whose A files we received, and about whom we also received information from databases kept and maintained by two of the Respondents in this action, the Executive Office for Immigration Review ("EOIR") and Immigration and Customs Enforcement ("ICE") (hereafter, the "database information"). Although there were a few individuals for whom we received files but not database information, and although not all of these individuals were in fact class members, I generally refer to the approximately 1,000 individuals about whom Respondents produced information as the "studied class members" for ease of reference.

3. Prior to the production of information concerning these roughly 1,000 individuals, Respondents

provided Petitioners' counsel a "snapshot" list of all class members detained as of a single day on or about April 30, 2010, shortly after the district court ordered Respondents to do so. A copy of the court's order can be found in this Court's PACER file at docket #67. Respondents produced another such "snapshot" list on February 24, 2011. This first list contained the names of approximately 400 individuals. The second list contained the names of approximately 360 individuals. We did not use those snapshot lists for any purpose other than to determine the numerosity of the class, and then to determine the numerosity of each subclass by interviewing individuals whose names appeared on those lists. I do not refer to them again in this declaration.

4. Pursuant to a discovery agreement between the parties, Respondents represented that the database information and A files they provided to us pertained to class members detained six months or longer in the Central District during the period from April 21, 2011 until approximately April 21, 2012, who spent a substantial portion of their time in detention in the Central District. Attached as Exhibit 1 to this declaration is a true and correct copy of correspondence from Respondents' Counsel Theodore Atkinson memorializing that agreement.

Database Information

5. Representatives of Respondents testified at deposition that information in those databases is reliable and relied upon by Respondents in the course of their regularly conducted activities. *See* Deposition of Sean Stephens at 21:24-22:14 (attached as Ex. I to the Declaration of Cody Jacobs); Deposition of Jen-

nifer Sherriff at 14:14-15:1 (Jacobs Decl. Ex. H); Deposition of Benjamin McDowell at 152:17-153:5 (Jacobs Decl. Ex. G).

6. The databases produced by Respondents include a variety of information about the studied class members, including when each studied class member was detained and released, whether he or she applied for any relief from removals, the outcome of any such applications, and other information.

A Files

7. I have litigated cases involving immigrants for over twelve years, and in that capacity have reviewed many immigrants' A files. Based on that experience, I am aware that an A file is a comprehensive file maintained by the government that contains records related to an individual's immigration proceedings, including custody review documents, court filings and decisions, and applications for relief. *See also* Dkt # 165 at p. 32 (Respondents defining an A-File as "a record containing documentation regarding an individual's interaction with U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), ICE and the Department of Justice as prescribed by the Immigration and Nationality Act (INA) and other regulations regarding immigration benefits.").

8. Respondents initially objected to producing A files, requiring Petitioners to bring a motion to compel. Dkt. # 165. On April 25, 2011, Magistrate Judge Block issued an order compelling Respondents to produce, *inter alia*, what amounted to approximately 1,000 A files of class members. Dkt. # 169. Specifically, the order required Respondents to produce the

files for "noncitizens detained six months or longer in the Central District from April 21, 2011 [until on or about April 25, 2012] . . . and who spent a substantial portion of their time in the Central District." *Id.* For each A file, the Court ordered Respondents to produce "any document sent, given or otherwise delivered by a Petitioner to the federal courts, DOJ or DHS (including ICE, CBP and USCIS) and documents sent, given or otherwise delivered by those entities to a Petitioner . . . [as well as] Post-Order Custody Review ("POCR") worksheets and transcripts, if they exist, of any statements by detainees to DOJ or DHS officials, such as transcripts of removal hearings or CBP interviews."

9. Over the course of several months, Respondents produced A files of studied class members. Respondents, however, claimed to be unable to locate every document that should have been present in the A files subject to the order granting Petitioners' motion to compel. In some instances, many documents were missing from A files produced by Respondents, including documents pertaining to the April 2010-2011 period. For example, the 16 page A file of **[REDACTED]**, A# **[REDACTED]**, contains no information about his case from the last several years. The same is true of the 50 page file of **[REDACTED]**, A# **[REDACTED]**, and the 50 page file of **[REDACTED]**, A# **[REDACTED]**. In light of the obvious gaps in some of the A files, Petitioners sought and obtained written assurance from Respondents that the A files produced were the product of diligent searches, and that no further documents from those files could reasonably be located. True and correct copies of the letters be-

tween Respondents and Petitioners stipulating to that effect are attached as Exhibit 2.

10. In addition, in certain instances, Respondents intentionally withheld certain documents from A files. In particular, Respondents withheld discrete categories of documents and information from A files under color of certain statutory and regulatory confidentiality provisions. First, Respondents redacted all applications for relief under the Violence Against Women Act (VAWA), T visas (for victims of human trafficking), and U visas (for victim witnesses to certain other crimes). Second, Respondents redacted all asylum-related documents, including applications for asylum. Third, Respondents redacted certain other portions of the documents under color of various unidentified privileges.

11. Petitioners objected to many of the redactions and filed a motion to compel. Magistrate Judge Block initially upheld the redactions, but the District Court reversed the Magistrate's ruling in several respects. Dkt. #210.

12. In light of the delays already caused in obtaining A files from Respondents, rather than wait months for Respondents to produce unredacted versions of A files a second time, and for other reasons, the parties reached an agreement concerning how to proceed. The parties agreed that Petitioners could request a small number of A files containing asylum-related information, which Respondents would then produce in full; as for other files, Petitioners agreed that Respondents would not need to produce unredacted versions of documents concerning applications for relief under VAWA, the T visa, and the U visa.

True and correct copies of the correspondence between the parties memorializing this agreement are attached collectively as Exhibit 3.

13. At the same time, the parties stipulated that the records contained in the A files produced by Respondents are authentic and admissible pursuant to Federal Rule of Evidence 901, 803(6), and 803(8)—though the parties preserved the right to contest the trustworthiness of individual documents within A files. *See* Ex. 2.

RAP Sheets and Parole Worksheets

14. We also received a small amount of additional information that was relevant to the analysis that I describe here.

15. Respondents agreed to provide un-redacted copies of a small number of A files, the parties agreed that Respondents would supplement their production of the A files with, among other things, "RAP sheets" and "parole worksheets." RAP sheets contain in summary form government data about the criminal arrest and prosecution histories of individuals. Parole worksheets are forms that ICE officers prepare when determining whether or not to grant parole to detainees who request it.

Summary of Studied Class Members' A Files

16. The files of studied class members are voluminous. Very few of the A files produced by Respondents have fewer than 100 pages, and many of them contain more than several hundred or even a thousand pages. For that reason, pursuant to Rule of Evidence 1006, this declaration contains a summary of the contents of A files prepared based on a review I conducted

14. There is not currently an LOP program conducted at the Theo Lacy Facility. As a result, none of the Theo Lacy detainees have the opportunity to attend an LOP.

Immigration Court Mail

15. Based on my experience with detainees in the Central District, the Los Angeles Immigration Court sometimes sends detainees notices by mail, rather than by hand-delivery. Furthermore, it is my understanding that the Santa Ana City Jail distributes mail to detainees on Monday, Tuesday, Wednesday, and Thursday only. I regularly send mail to detainees at the Santa Ana City Jail and have found that, on average, it takes at least three business days for mail to reach the detainees.

16. Throughout my experience directly representing immigrant detainees in the Central District, as well as supervising the representation of such detainees, none of the detainees received notices from the Los Angeles Immigration Court translated into a language other than English. To the best of my knowledge, there is no procedure for requesting copies of written notices translated into a language other than English. The notices from the Department of Homeland Security ("DHS") are also generally in English, with the exception of what is known as an "Orantes" advisal notice, which is translated into Spanish. As a result, many detainees often have difficulty reading and understanding the notices they receive from the Court and DHS, especially when the detainees do not have the benefit of legal representation.

Immigration Case Processing

17. Based on my experience providing LOPs at the Santa Ana City Jail and the Musick Facility, I would estimate that detainees are on average scheduled for their first hearing in immigration court approximately 3 weeks after they are first detained. This first hearing is called a "master calendar" hearing. The only way an immigration case is typically resolved at the initial master calendar hearing is if the detainee agrees that he is removable as charged, waives his right to file any applications for relief and to appeal, and agrees to accept an order of removal.

18. If the detainee instead wishes to attempt to find legal representation or fight his immigration case—by arguing that he is not removable as charged or by filing an application for relief from removal—the case generally cannot be resolved at the initial master calendar hearing. In my experience, it typically takes at minimum one additional court hearing, but often several additional hearings, to reach a final resolution in the case. In cases in which the detainee wishes to apply for relief from removal, the immigration judge will typically provide a copy of the application for relief to the detainee at the first or second master calendar hearing and continue the case.

19. In my experience, the majority of detainees at the Santa Ana City Jail, Theo Lacy Facility, and Musick Facility do not have representation at their initial master calendar hearing. Based on my experience, many pro se detainees who are unfamiliar with legal practice or unable to speak or read English struggle to understand the steps necessary to file applications for

relief and other court procedures. When I encounter a detainee who I assess as having a strong defense to removal or claim for relief, I typically request that the detainee ask for a continuance to allow me time to recruit a pro bono attorney to represent them, or to locate and mail any relevant pro se guides or manuals to assist them with their case.

20. In my experience, detainees are typically provided with the Executive Office for Immigration Review's list of free legal services providers before or at the initial master calendar hearing. Additionally, immigration judges will typically ask pro se detainees at their initial master calendar hearing whether they would like an opportunity to obtain representation or legal assistance.

21. Based on my experience, continuances that provide detainees with time to find an attorney or to prepare their applications for relief are critical safeguards that ensure that pro se detainees are not rushed through a complex system that they may not understand without legal assistance or sufficient time to prepare. Because there are very few free legal resources available to detainees, and because immigration law is extremely complex, in my experience it can often take pro se detainees a significant amount of time to obtain legal assistance and prepare their defenses to removal or applications for relief. In such cases, it is often necessary for detainees to take multiple continuances to find an attorney or have sufficient time to prepare their cases pro se.

22. In cases where the detainee has filed an application for relief, the resolution of the case happens at a

"merits" hearing. In order to get to a merits hearing, the immigration judge must continue the case at least once because a merits hearing is never the first hearing scheduled in a case. Merits hearings are typically longer hearings than master calendar hearings and, in some cases, require judges to block off approximately a half day for the hearing. In my experience, there are typically longer delays in scheduling a merits hearing than a master calendar hearing.

23. Cases do not necessarily conclude at the first scheduled merits hearing. For example, the immigration judge's schedule may not permit sufficient time to hear all the evidence relevant to a detainee's application for relief from removal at the first merits hearing or there may be more than one merits hearing scheduled for the same time slot. In such cases, the immigration judge will continue the case and schedule another merits hearing. In my experience, asylum cases, for example, may require more than one merits hearing, and can require as many as four merits hearings.

Detainee Assistance

24. Through my LOPs, I often explain to detainees how to request bond hearings. In my experience, many detainees are unable to understand the regulations that govern bond hearings, and are often confused about their eligiblity for bond. During the past four and a half years, I would conservatively estimate that I have met with at least a dozen detainees who did not know they were eligible for a Casas hearing. I provided several of these detainees with pro se materials explaining how to request a Casas hearing.

25. Based on my observations and experience, I believe that a significant number of detainees give up meritorious claims and appeals because they cannot bear to stay in detention for the lengthy periods it may take to litigate their case. I have explained to detainees how to give up their cases and leave the country because they can no longer handle being in custody.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed at Los Angeles, California on Feb. 6, 2013.

/s/ TALIA INLENDER
TALIA INLENDER

Declaration of Cody Jacobs

I, CODY JACOBS, declare and state:

1. I am an Associate at Sidley Austin LLP and counsel of record for Petitioners in the above-entitled case. I have personal knowledge of each of the facts stated in this declaration and, if called to testify, I could and would testify competently as to each of them.

2. After Petitioners prevailed on discovery motions relating to A files and associated materials (Dkt. 169 & 210), Respondents produced documents bearing bates labels ICE-RPD-06654 to ICE-RPD-09804, which Respondents represented were the "rap sheets" of class members. These documents are voluminous —3,151 pages—and relate to 937 individuals. As a result, this declaration provides a summary based on a review of the rap sheets by myself and paralegals and legal support personnel working under my direction. We recorded the longest sentences of incarceration that appeared on the rap sheets produced by Respondents for each of the 937 individuals to determine which percentage had been detained for less than and more than 180 days.

3. According to the website for the Federal Bureau of Investigation (http://www.fbi.gov/about-us/cjis/background-checks, *visited on* February 4, 2013), a rap sheet or "Identification Record" "is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. The process of responding to an Identification Record request is generally known as a

criminal background check. If the fingerprints are related to an arrest, the Identification Record includes name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known to the FBI. All arrest data included in an Identification Record is obtained from fingerprint submissions, disposition reports, and other information submitted by agencies having criminal justice responsibilities." A true and correct copy of a printout of that webpage is attached hereto as Exhibit A.

4. The rap sheets produced by Respondents contain lists of charges and, for each charge, a field called "DISPO," which contains information indicating the disposition of each charge (i.e., convicted, acquitted, etc.). Based on our review, when the rap sheets produced by Respondents referenced a conviction in the "DISPO" field, they also contained a field called "SEN," stating the length, if any, of the associated criminal sentence.

5. In order to prepare this summary, we recorded information from the rap sheets in the following manner:

a. So long as a rap sheet recorded a criminal sentence of incarceration of any length, we recorded the longest sentence of incarceration.

b. Where rap sheets contained dispositions described as convictions, but did not record sentences that included incarceration (e.g., probation), did not include any sentences at all, or only recorded "time served," the length of the longest sentence of incarceration was recorded as "0."

c. Where the only charges reflected on the rap sheets were immigration charges, and there were no dispositions recorded for those charges, the length of the longest sentence of incarceration was recorded as "0."

d. Where rap sheets did not record any criminal disposition of conviction (e.g., dismissal or acquittal), the length of the longest sentence of incarceration was recorded as "0."

6. In addition, to prepare this summary, we identified eighty (80) individuals for which rap sheets contained one or more non-immigration criminal charges, but did not record any dispositions for the criminal charges.

7. Below is our summary of the rap sheets:

a. Excluding the 80 individuals for whom the rap sheets did not include a single disposition record for criminal charges, 63% (544/857) of the individuals for whom rap sheets were provided had no criminal sentence longer than six months.

b. Including the 80 individuals for whom the rap sheets did not include a single disposition record for criminal charges, and assuming all of them had sentences longer six months, 58% (544/937) of the individuals for whom rap sheets were provided had no criminal sentence longer than six months.

8. Below are three exemplars of rap sheets Respondents produced for class members.

a. The rap sheet produced by Respondents for [**REDACTED**] contains a longest sentence of 30

days (associated with a charge of being under the influence of a controlled substance). According to the information produce by Respondents from immigration databases, **[REDACTED]** was in immigration detention for 646 days—***over a year and nine months***—before winning his case. A true and correct copy of the rap sheet produced by Respondents for **[REDACTED]** is attached as Exhibit B.

b. The rap sheet produced by Respondents for **[REDACTED]** contains a longest sentence of 90 days (associated with a charge of being under the influence of a controlled substance). According to the information produced by Respondents from immigration databases,[1] **[REDACTED]** was in immigration detention for 764 days—over two years—before winning his immigration case. A true and correct copy of the rap sheet produced by Respondents for Mr. [REDACTED] is attached as Exhibit C.

c. The rap sheet produced by Respondents for **[REDACTED]** contains a longest sentence of 90 days (associated with a charge of possession of a controlled substance with intent to sell). According to the information produced by Respondents from immigration databases, **[REDACTED]** was in immigration detention for 600 days—***over a year and seven months***—before winning his case. A true and correct copy of the rap sheet produced by Respondents for **[REDACTED]** is attached as Exhibit D.

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[1] The authenticity and admissibility of the voluminous information in the immigration databases is described in the concurrently-filed Declaration of Ahilan Arulanantham.

9. A true and correct copy of relevant portions of the deposition of Assistant Chief Immigration Judge Ivan Fong are attached as Exhibit E to this declaration. Respondents designated portions of this deposition as "confidential" under the protective order entered in this case.

10. A true and correct copy of relevant portions of the deposition of Assistant Field Officer Director Wesley Lee are attached as Exhibit F to this declaration. Respondents designated portions of this deposition as "confidential" under the protective order entered in this case.

11. A true and correct copy of the relevant portions of the deposition of Benjamin McDowell are attached as Exhibit G to this declaration. Respondents designated the entirety of this deposition as "confidential" under the protective order entered in this case.

12. A true and correct copy of the relevant portions of the deposition of Jennifer Sheriff are attached as Exhibit H to this declaration. Respondents designated the entirety of this deposition as "confidential" under the protective order entered in this case.

13. A true and correct copy of the relevant portions of the deposition of Sean Stephens are attached as Exhibit I to this declaration. Respondents designated the entirety of this deposition as "confidential" under the protective order entered in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true

and correct. Executed this 8th day of Feb., 2013 at Los Angeles, California.

/s/ CODY JACOBS
CODY JACOBS

Exhibit E: Deposition of Thomas Y.K. Fong (excerpts)

Los Angeles, California

Tuesday, February 28, 2012

* * * * *

[46]

the individual a danger to the community or a flight risk?

It is certainly unfortunate that anyone is held in detention any longer than necessary, but I don't normally see a correlation—I can't see one and I'm sure there probably might be an exception, but I can't see, in my view, whether prolonged detention has anything to do with whether someone is a flight risk or someone who maybe a danger to the community.

When I say that, if someone is going to be released within the next few days versus being held for a prolonged period, as some of the cases have discussed, is the person going to be a danger to the community whether he is released X number of days versus X number of months?

Unless there is some change in circumstances or material change, I don't see how prolonged detention would fall into that category. Is the person still going to be a danger to the community X number of months from now versus tomorrow, if I release them?

So that—I say to you, I don't think of that. Those to me are not—to me, prolonged detention is not an issue. It's—is he going to be, if released, a danger to the community or a flight risk.

BY MR. ARULANANTHAM:

* * * * *

[57]

question.

THE WITNESS: I don't know.

BY MR. ARULANANTHAM:

Q If the release rate went up or down in any significant way, would you know about it?

MR. ATKINSON: Object to the form to the question.

THE WITNESS: No, I would not, and I have no interest in it even if I did find out.

BY MR. ARULANANTHAM:

Q Generally, again, when an immigration judge under your supervision or yourself is considering a release on bond, regardless of whether it's a Casas or a 236(a) bond hearing, is there any consideration by the immigration judge of alternatives to detention other than bond itself?

MR. ATKINSON: Object to the form of the question.

THE WITNESS: If I understand your question, are you referring to, for instance, what is the layman use ankle bracelets, you mean, versus something like that?

MR. ARULANANTHAM: Yes.

THE WITNESS: No. That is not our determination. Immigration judges do not have authority in that area to determine on what—what type of release [58] the alien is released on, only the amount of the bond, if any necessary, or whether it's versus—a mandatory detention versus a bond that can be set.

BY MR. ARULANANTHAM:

Q So if there were an individual who was eligible for release on bond, and in your view, a monetary bond wouldn't be sufficient to ensure that individual's appearance but released on an electronic monitoring device would be sufficient to ensure that person's appearance, what would you do in that situation? Would you order the person detained because there is no—because you can't order the electronic monitoring?

MR. ATKINSON: Object to the form of the question.

THE WITNESS: The only determination for a judge, again, is—I'm sorry to repeat myself—is can an appropriate bond ensure his—that he is not a flight risk, that he will appear for hearings and removal, if necessary, or a danger to the community.

We don't have any dealings with ankle bracelets or other forms of DHS custody release, nor do we have authority to issue one or to have one removed.

BY MR. ARULANANTHAM:

Q So in my hypothetical, where in your view there isn't a bond that will ensure the person's appearance,

* * * * *

[68]

It is the third full paragraph that begins, "As explained below, the immigration judge may make a determination."

Do you see that?

A Yes.

Q Will you take a minute and read that paragraph and the next paragraph.

A All right.

Q Have you held Joseph hearings in any of the cases that you've sat on?

A Not that I can specifically recall.

Q Do you know if the judges that you oversee in the detained docket have held Joseph hearings?

A I do not know of a specific case, although I suppose it is possible. I assume it is possible.

Q But that's not something that you would track or find out about unless you got asked a question about it?

A Correct.

MR. ATKINSON: Object to the form.

THE WITNESS: Yes. Correct.

BY MR. ARULANANTHAM:

Q And you don't recall or do you recall a judge asking you any questions about a Joseph hearing?

A No.

Q So then—I'll just ask it. I think I know the

* * * * *

[88]

detention, the judge's—what should the judge be analyzing to make that determination?

A Are you referring to Matter of Joseph now? Because when that term—

Q Yeah, Matter of Joseph.

A Matter of Joseph is limited to lawful permanent resident individuals, from my understanding. So I'm not sure whether you are referring to—or in the context of Matter of Joseph, or are you referring to it as a general proposition?

Q As a general proposition.

A Again, what I have always done is look at the Ninth Circuit board decisions that tell me, let alone reading the statute and regulations, what they give me as guidance.

There are certain case—certain cases that have specifically stated a specific violation of law is a mandatory detention. That was an easy one.

When it comes to the others, I have to interpret the statute and any case law that comes with it; does this fall into that category or is it one that appears to fall in that category.

Q Is there anything other than the person's criminal history which is relevant to that determination?

A From my understanding, it is not. If a [89] mandatory detention deals with a criminal conviction of some kind or kinds, the other factors are not relevant. It is the crime that's committed that, my understanding is, the mandatory detention issue upon—pursuant to the statutory language that is used.

Q As I understand it, some of the offenses which trigger mandatory detention do not render the respondent ineligible for cancellation or removal, but other ones do.

A That is my understanding, also.

Q And the fact that a detainee may be eligible for cancellation of removal would not be a basis, then, I take it, for finding that the mandatory detention does not apply?

A That is my understanding, also, of what has been prescient decision interpretation. The issue, though, is the statute and congressional mandate that indicates certain crimes require a mandatory detention by DHS. We are to review that—as immigration judges, our authority is to review that to ensure that is a proper determination by the government.

And obviously, that's the issue, but my understanding, it does not then—that they are not joined together. There's not a nexus or relationship between the statute that requires mandatory detention

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have an in-house interpreter, not a problem, translate it. If not, the individual would have to get someone to translate it for them.

When I say that, maybe it is an exotic language I don't—I can't read it. But I have had on occasion individuals who have actually had family members; although I'm cognizant there might be some self-interest, they are put under oath to translate honestly and faithfully as to what the document contains.

But that's for the bond hearing, as I said. It is a much more informal opportunity to present the case, because, again, it is a very serious issue under the statutes, the law, and our Constitution, an individual having the right to be released appropriately to defend themselves.

That even applies to an individual who is allegedly an alien unlawfully here or a permanent resident alien where the government is attempting to remove his status or lose his status.

Q Is ex parte evidence permissible in a bond hearing?

A No. No. The respondent should be there and has to be there.

Q Can the government put in evidence of the other side that the detainee isn't allowed to see or the [177] detainee's counsel is not allowed to see?

MR. ATKINSON: Object to the form of the question.

THE WITNESS: I cannot think of an instance that I have had.

BY MR. ARULANANTHAM:

Q Are you aware—

A I don't know why they would even try that.

Q Are you aware of it happening with any judge that you supervise?

A No, I'm not aware of it. I certainly would have said something if I had heard that. I wouldn't have to wait for the judge to come talk to me.

Oh, actually, let me correct one statement. There is a regulatory provision in terrorist cases where ex parte evidence can be presented to immigration judges because of national security or protection of informants. There is that rare exception.

Q But you are not aware of that ever happening in a case—

A Not in a regular Casas case or any type like that. I know it has occurred in terrorist cases, but that's rather rare. And even in that situation, it is rather carefully applied, I would think.

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Exhibit F: Deposition of Wesley J. Lee (excerpts)

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[16]

structure clear, who is below that?

A. The deportation officers.

Q. So just take, for example, a parole decision. Would that be made initially by a deportation officer?

A. The recommendation would be made by a deportation officer.

Q. And then who makes the final decision?

A. Right now I'd make the final—or AFODs make the final decision. I make my facility and there's other facilities within L.A.

Q. But does the supervisory deportation officer, the SDDO, make an initial decision as well?

A. They make a recommendation. There's three sign-offs: Deportation officer makes the recommendation; supervisory deportation officer makes one; and then the final is with the AFOD right now.

It used to be probably similar to—those that you see in there were made by the deputy. It used to be at the deputy level. It was delegated down.

Q. That's Tim Robbins delegated it to?

A. To the deputy field officer director.

Q. Okay. And then the deputy field officer directors in turn delegated it to the AFODs?

A. It was delegated to the deputy and now the [17] field office director delegated it down to AFODs.

Q. I see. Does that mean that you also then make the final decision with respect to POCR reviews for people detained in Mira Loma?

A. No.

Q. Who makes that?

A. Deputy field officer director.

Q. So with parole, you are the final decision-maker?

A. Yes.

Q. With POCR it goes one level above you?

A. Right. It's as far as it can be delegated down to the deputy, according to our policy.

Q. What about for Casas-Castrillon release decisions?

A. Casas decisions go to the deputy field office director.

Q. What about initial—just while we're here, since we're covering it—initial detention decisions?

A. The initial recommendation is by the arresting officer, whether it's an immigration enforcement agent or a deportation officer.

Q. And the final decision on whether to detain at the initial arrest stage is made by who?

[18]

A. Well, there's many levels of review, but a supervisor is the one that actually signs off on the recommendation. But it's reviewed after that.

Q. Okay. I guess in the other situations you've described, people below—for example, on parole—people below you are making a recommendation, but you're making the final decision?

MR. ATKINSON: Object to the form of the question.

THE WITNESS: I didn't understand.

BY MR. ARULANANTHAM:

Q. With parole recommendations, with parole decisions, as you have described it—and tell me if I'm wrong—people below you make the recommendation, but you make the final decision?

A. On paroles, yes.

Q. So with respect to the initial detention decision, who is analogous to you?

A. Say that again.

Q. Who is analogous to you? Who makes the final decision with respect to initial detention?

A. Initial—

MR. ATKINSON: I'm sorry. Give me a second to get my objection in.

Object to the form.

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reviewed and what their rights are. And there is a paragraph where they describe the, maybe, criminal history and the flight risk. And it ends up with that they can go to the Immigration Judge.

So is it boilerplate? It definitely has some language in it for every detainee because it's all the same language.

Q. Would you say it's less detailed than a POCR decision but more detailed than 236(a) decision?

MR. ATKINSON: Object to the form.

THE WITNESS: I would say it is less detailed than a POCR decision, yes.

BY MR. ARULANANTHAM:

Q. What about parole decisions, is there a comparable policy that boilerplate write-ups are unacceptable for parole decisions?

A. I've never seen that in a policy.

Q. What's your view about it?

MR. ATKINSON: Object to the form.

THE WITNESS: The parole determination is—it's done on different type of individual. It's really done on asylum seekers who come in. And 99, probably, .9 percent of them have no criminal history so we're really not looking at that type of stuff that we would look at on a 236(c) or Post-Order Custody

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[40]

You can answer

THE WITNESS: On criminality I don't really know if there's been any tracking crimes that were committed by people that were released because we thought they weren't going to be a danger. Definitely there would be some statistics on people that were released because we didn't think they were going to be a flight risk and were a flight risk.

BY MR. ARULANANTHAM:

Q. Have the custody decisions changed over time to reflect information about the absconder rate for people who are released and then found to be a flight risk?

MR. ATKINSON: Object to the form of the question on the same basis and on other bases.

You can answer.

THE WITNESS: I think the custody decision really has always been the same. It's just—it's really just been how much bed space you have. Like I say, you're allocated "x" amount of dollars. I mean definitely our department is an enforcement arm for immigration law, so that is what we do, that's what the taxpayers pay us for.

So, you know, we—definitely if we had the funding, I think the mission would be that we're [41] funded for, to enforce immigration laws. So I don't really —I don't think anything has changed since I was in in '88. The same people were being released back then

because of not enough resources as are being released today because of not enough resources.

BY MR. ARULANANTHAM:

Q. Except that, I suppose, as the bed capacity—because the bed capacity has increased dramatically since 1988; right?

A. Definitely. So has the immigration problem.

Q. Right. So in that sense the number of people that you're detaining, the raw number of people, has gone up?

A. I would hope so, since the program has gone way up.

Q. On the same topic about change or lack thereof in custody determination decision-making, if, for example, at a Casas hearing case ICE decides to keep the person detained but then the Immigration Judge redetermines that and orders the person released on bond, does that decision, the fact that the Immigration Judge reached a different decision—does that get back to the ICE officers?

A. Yes. Like I say, the judges are at our facilities. So, you know, the officers are working * * *

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are there spellings or anything that you need right now while we have a moment?

THE REPORTER: I can't think of anything at the moment.

MR. ARULANANTHAM: If you can spell my name it's all downhill from there.

Q. Who is eligible for release on parole?

A. Who is eligible?

Q. Yeah.

MR. ATKINSON: Object to the form.

THE WITNESS: Just generally?

BY MR. ARULANANTHAM:

Q. Yeah.

A. An arriving alien would be eligible.

Q. So when someone comes into your custody, meaning into the ICE field office custody, how do they know—how does ICE know this is a person who is parole-eligible as opposed to, you know, one of the other categories?

MR. ATKINSON: Object to form.

THE WITNESS: Well, 99 percent of our cases that come in that would be eligible for parole have come in at a port of entry and have claimed they were, you know, put into expedited removal and then claimed a credible fear and were referred to ICE to see an [98] asylum officer. So it kind of triggers it for us.

BY MR. ARULANANTHAM:

Q. If a person is coming over the land border in San Diego, then they would have gone through that process before they got to the L.A. field office; right?

A. True.

Q. So how then when they get to the L.A. field office do you know that they're parole eligible as opposed to detainees who would be subject to 236(a) or some other process?

A. Their paperwork comes with them.

Q. So someone reviews—someone in the L.A. field office reviews that paperwork after they arrive?

A. Yes, they do.

Q. Tell me about that. How does that process work?

A. Most of the Los Angeles field office's detainees come through staging at our office downtown. So especially if they're coming from San Diego, they would come downtown. And the officers there would review the cases before they send them out to the detention facilities. And then they're reviewed again once they get out to the detention facilities.

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[100]

BY MR. ARULANANTHAM:

Q. Right. And obviously if someone's caught at LAX, then the credible fear interview would typically also happen in Los Angeles; right?

A. I would say yes.

Q. The standard for release on parole—does it also include danger and flight risk? Is that right?

MR. ATKINSON: Object to the form.

You can answer.

THE WITNESS: Yes. It's identity. It's your identity and flight risk and it does have danger to the community, yes.

BY MR. ARULANANTHAM:

Q. Are there other factors involved in the parole detention decision which are different from the 236(a) detention decision?

You said identity, danger, flight risk. Is there anything else?

A. There's actually a lot of factors that go into that decision. But, yeah, that's kind of pretty much what we look at: Danger, the criminal history or—well, both of them can include national security concerns.

Q. I'm going to hand you what we will mark as Exhibit 5.

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(Recess taken.)

MR. ATKINSON: Okay. Sorry.

BY MR. ARULANANTHAM:

Q. If, for example, the address didn't check out, that's not something that the officer would write in the parole denial; right?

A. In the—

Q. That's not something that the officer would write down in the parole denial typically?

MR. ATKINSON: Object to the form of the question.

THE WITNESS: This decision letter has changed. It's a little bit more detailed now, so there are more checked boxes. So there may be a checked box on there that says they haven't provided an address in the U.S.

BY MR. ARULANANTHAM:

Q. But other than what the checked boxes provide, the officers don't write other explanations for the denial; for the parole denials; is that true?

MR. ATKINSON: Object to the form of the question.

THE WITNESS: The decision that the detainee gets is just the decision letter. Like I say, the decision letter has been changed. Once policies come [107] out, things change when you see that they need to be changed.

So now it—the decision letter is still a checked box, but it definitely has a little bit more—it's broken down in more details so it gives them an opportunity. But they're interviewing these people so the decision letter might not go into detail. But definitely the detainee knows what the issues are unless they're of a national security concern.

BY MR. ARULANANTHAM:

Q. So the detainee might orally hear more about why they're being denied parole. But I'm only asking again because I don't think you actually answered my question kind of precisely, although I understood what

you said, that any explanation other than the checking of the boxes would not appear in the decision letter; is that correct?

A. There's another decision letter besides this one—

Q. Right.

A. —but the checked boxes that are on there is all we're doing right now. That's our procedure.

Q. There's no other document that is in the file that explains the decision beyond the decision letter; [108] is that correct?

MR. ATKINSON: Object to the form.

THE WITNESS: There will be officer notes, yeah.

BY MR. ARULANANTHAM:

Q. But those are—that's not something that a detainee would see or that anybody outside of ICE would see; is that right.

A. It's not.

Q. That's going to look funny on the record.

When you say it's not, you mean it isn't anything—no one else will see that; is that correct?

A. It's law enforcement privileged. I don't think anybody will see it.

Q. Is the danger standard used—actually strike that question.

You had said earlier that information might come to you about a detainee through the JTTF?

A. Yes.

Q. How often does that happen in a parole decision?

[REDACTED]

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THE WITNESS: I would assume that if they discovered something that needed to be changed, they would notify the field to make that change. That's probably why they made the one change on the decision letter.

BY MR. ARULANANTHAM:

Q. If everything else were fine, you would know that too?

MR. ATKINSON: Object to the form.

THE WITNESS: I would only know what they tell me.

BY MR. ARULANANTHAM:

Q. How officers are trained in making parole determinations?

A. I would say it starts at the academy, and then as you go through your career you'll get updated training throughout, depending on what office you're in and what unit you're in as the frequency of that training.

When this new policy came out, there was training with this new policy. It changed our parole a little bit.

Q. Right. You said earlier that each parole packet, set of documents, gets sent to headquarters. That's not for the purpose of headquarters deciding to [119] change that decision; is that right?

A. That's correct, it's not. It's for the analysis.

Q. So is it—or have you ever seen a decision that was made at the field office level get changed by people at headquarters with respect to parole?

A. I have not.

Q. Do you know if that ever happens?

A. I haven't seen it.

MR. ARULANANTHAM: We can stop for lunch.

MR. ATKINSON: That's a good idea.

MR. ARULANANTHAM: I'm not quite done with parole stuff, but why don't we stop.

(The luncheon recess was taken at 1:02 P.M.)

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we don't have a lot of information on criminal history on somebody that's arriving where it's the first time they've been in the U.S., so we don't really know whether they're a danger or not because we don't have any information on them basically. So it is different.

BY MR. ARULANANTHAM:

Q. Please forgive me if I've asked these questions before, I just couldn't remember from my notes.

The length of detention, both past and future, the past detention and the likely future detention—are those factors you consider in parole decisions?

MR. ATKINSON: Object to form.

THE WITNESS: They would not be.

BY MR. ARULANANTHAM:

Q. I would imagine once in a while there are people who are—have some immigration status who are returning and then get subject to the parole custody determination process. Is that true?

MR. ATKINSON: Object to the form.

THE WITNESS: Say that again.

BY MR. ARULANANTHAM:

Q. You said earlier that most of the people

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type cases, if they're not released on parole, it's—the largest percentage is because they don't have a place to go, they don't have a sponsor, they have nowhere to go.

At the POCR process that's not a consideration. If we can't remove them, we have to release them.

MR. ATKINSON: Sorry. Hang on a second. Hold on a minute. I'm sorry.

(Discussion held off the record.)

BY MR. ARULANANTHAM:

Q. Earlier I showed you the parole policy.

MR. ATKINSON: You mean Exhibit No. 6?

MR. ARULANANTHAM: It may be marked as Exhibit 6.

THE WITNESS: I got it.

BY MR. ARULANANTHAM:

Q. If you go to page—it's ICE page 26. Look at Paragraph 8.2. It says in the fifth line that the officer, DRO officer, must conduct an interview with the alien to assess his or her eligibility for parole. Do you see that?

A. Yes.

Q. I think earlier you said you do do it and you weren't sure if it was policy that you had to or not.

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mechanism for you to catch it?

A. When I review them, I just review from the A-File and the documentations they use. I don't go into any systems when I'm reviewing.

Q. Let's say that the detainee had told the deportation officer in an informal interview that he did have employment prospects but the deportation officer wrote "None," and there's no written indication of the detainee's statement to the officer.

Is there any way for you to catch that mistake?

A. There's no way.

Q. Go to the page that at the bottom is marked 77. It's in the same exhibit.

A. Seventy-seven?

Q. But it's further down. Second-to-last page. I don't know what happened.

A. Okay.

Q. Do you see the box there, "Officer Comments/Analysis & Recommendation"?

A. Yes.

Q. So I'm going to generalize about the five, six paragraphs that are here. Let me know if you agree with this characterization. It says that—or strike that.

* * * * *

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A. Yes.

Q. And to prepare for this deposition you familiarized yourself with the positions of—the positions of and the information available to Immigrations and Customs Enforcement and Department of Homeland Security in order to be able to testify about those topics; is that correct?

A. I would say, yes, I did familiarize myself.

MR. ATKINSON: We just want to make one notation on the record: That we had originally designated Mr. Lee with respect to eight and nine just to speak for the department with respect to notification provided to persons eligible for such hearings, but we

understand the scope went beyond that and—which is fine.

MR. ARULANANTHAM: Then to that end actually, let me just clean this up and ask that one question then.

Q. Once a detainee has been determined to be subject to mandatory detention under 236(c), are they given notice of that?

A. Yes.

Q. How?

A. It's on the custody determination.

Q. On the sheet it says what?

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A. It's a checked box that says you've been determined to be a mandatory detention. I don't think it specifically says 236(c), but—

Q. Is the detainee informed of any ability to seek redetermination of that determination?

A. On 236(c)? No.

MR. ARULANANTHAM: Can we go off the record for one second?

MR. ATKINSON: Sure.

(Discussion held off the record.)

BY MR. ARULANANTHAM:

Q. Does the detainee have the opportunity to argue to ICE that he's not subject to mandatory detention?

A. Does he have the opportunity to?

Q. Yes.

A. He can argue that to the officer that's writing him up. I don't know—on the custody determination if we're going to place him them 236(c) mandatory detention because we believe the crime places them there, there's a check box on there that says they're mandatory detention. And there are little check boxes on the form if you guys have a copy of one. And if they're not 236(c), it has on there that you have a right to, you know, an immigration [209] hearing with an IJ, Department of Homeland Security.

On that particular one if we determine they're 236(c), it says they cannot have a bond hearing.

Q. You said the detainee can argue with the officer who's writing him up?

A. Yeah.

Q. Is there an interview? Or how does that happen?

A. There's an interview done between the detainee and the arresting officer, even if it's at a detention facility, and we have 287(g) there, and there's discussion about, you know, what are your crimes; and then they'll be verified and they'll discuss their—why they're being charged and then they'll sign their notice to appear and their custody determination.

So definitely you're talking to the detainee in a large majority of the cases. There are instances where you may not. An NTA may be written up without talking to the detainee.

Q. This is the same decision—the process that you're talking about now when the officer is talking to the detainee—that's the same time when the officer is deciding whether the person is going to be * * *

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Q. In fact, at Mira Loma you have approximately 800 beds that are not currently filled; is that correct?

A. That's correct.

MR. ARULANANTHAM: Objection to form.

MR. ATKINSON: Did you get his answer?

THE REPORTER: Yes.

MR. ATKINSON: Okay.

No further questions.

MR. ARULANANTHAM: I have one question. Do you have any?

MR. KAUFMAN: No.

EXAMINATION (CONTINUING)

BY MR. ARULANANTHAM:

Q. Earlier when we spoke about a notice for detainees subject to mandatory detention, you said that the Notice of Custody Determination form says on it that you cannot get a review by an Immigration Judge if you're subject to mandatory detention; is that correct?

A. Yes.

MR. ARULANANTHAM: Nothing else.

MR. ATKINSON: We're going to read and sign the deposition.

Declaration of Michael Kaufman

I, Michael Kaufman, hereby declare:

1. I am a staff attorney at the American Civil Liberties Union of Southern California and counsel of record for Petitioners in the above-entitled certified class action ("*Rodriguez*"). I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

Overview

2. During the course of discovery in *Rodriguez*, Respondents produced information about class members from government databases maintained by the Executive Office for Immigration Review ("EOIR") and Immigration and Customs Enforcement ("ICE"), as well as portions of A-files, for 1,026 people Respondents represented were class members. These individuals are referred to as the "studied class members." Specifically, Respondents represented that the information pertains to noncitizens detained six months or longer in the Central District from approximately April 21, 2011 until approximately April 21, 2012 who spent a substantial portion of their time in detention in the Central District. Petitioners received several "shipments" of data about those individuals, including one on or about August 12, 2011 and another updated one on or about October 11, 2012. Petitioners also received A files for those individuals over the course of several months, although the files were never updated.

3. The parties have stipulated that the A files produced by Respondents are authentic under Rule 901 of the Federal Rules of Evidence, and, absent a challenge

to the reliability of a specific document, admissible under either or both Rule 803(6) and Rule 803(8) of the Federal Rules of Evidence. True and correct copies of letters between the parties memorializing this stipulation are attached as Exhibit 2 to the Declaration of Ahilan Arulanantham.

4. Representatives of Respondents testified at deposition that information in the government databases produced to Petitioners is reliable and relied upon by Respondents in the course of their regularly conducted activities. *See* Deposition of Sean Stephens at 21:24-22:14 (attached as Ex. I to the Declaration of Cody Jacobs); Deposition of Jennifer Sherriff at 14:14-15:1 (Jacobs Decl. Ex. H); Deposition of Benjamin McDowell at 152:17-153:5 (Jacobs Decl. Ex. G).

5. Respondents produced to Petitioners database information and A file documents related to approximately 1,026 individuals who Respondents represented that they do not maintain database information specifically identifying the detention statute pursuant to which they detain class members (or other detainees). As Government counsel Theodore Atkinson stated in correspondence to us, "Respondents do not maintain electronic records of the detention statute that authorizes or authorized detention." A true and correct copy of that letter, dated March 17, 2011, is attached to the Declaration of Ahilan Arulanantham as Exhibit 1.

6. In the following paragraphs, I explain how we determined from the information and documents produced by Respondents which individuals fell within certain subclasses, and how we determined which indi-

viduals do not qualify as class members, notwithstanding that Respondents produced their information to us.

Identifying Individuals in the 1225(b) Subclass

7. The Section 1225(b) subclass includes people who are arrested at a port of entry "seeking admission" to the United States and are detained under 8 U.S.C. § 1225(b) ("Section 1225(b)"). The government decides the custody status of Section 1225(b) subclass members through the parole process, an administrative review conducted by ICE officials.

8. To identify individuals in the 1225(b) subclass, we determined whether the A files contained parole worksheets. A parole worksheet is a standard form used by ICE to determine the custody status for individuals detained under Section 1225(b). The presence of a parole worksheet in an A file evidences that an individual has been detained under Section 1225(b).

9. We tested the accuracy of our method for determining membership in the Section 1225(b) Subclass through actual review of a sample of the files of individuals we had identified through this method. That review confirmed that the individuals with parole worksheets in their files were members of the Section 1225(b) subclass.

10. Pursuant to a discovery agreement memorialized in a June 4, 2012 letter from Mr. Atkinson to Mr. Arulanantham, Respondents produced parole worksheets for approximately 68 individuals. In a March 23, 2012 letter, counsel for Respondents represented that these parole worksheets were located within the 1,026 A files based on reasonably diligent and reliable

searches. For purposes of the data summarized below, these individuals have been categorized as members of the Section 1225(b) subclass.

11. True and correct copies of the June 4, 2012 and March 23, 2012 letters from Respondents' counsel are attached hereto as Exhibits A and B.

Identifying Individuals in the 1226(c) Subclass

12. The Section 1226(c) subclass includes people who are subject to mandatory detention under 8 U.S.C. § 1226(c).

13. To identify individuals in the 1226(c) subclass, we needed to consult two pieces of information within database information and A files produced by Respondents. First, we consulted a field within the EOIR Access database produced by Respondents on October 14, 2011 that identifies the statutory provisions under which an individual was charged as removable. We compared the charges listed in the EOIR database for each class member with the charges that qualify as mandatory detention offenses, as provided in 8 U.S.C. § 1226(c)(1). Individuals that had been charged with a mandatory detention offense were detained pursuant to Section 1226(c) at some point during their detention. In the March 17, 2011 letter from Mr. Atkinson to Mr. Arulanantham, Respondents confirmed "the charge against the alien (from EOIR)" could be used to "identify whether the detainee is/was held under mandatory detention."

14. Second, we reviewed the EOIR database for records evidencing whether these individuals were detained under Section 1226(c) at any point after they

had been detained for at least six months (because the statutory authority for detention in certain circumstances can change over time). For example, individuals charged with a mandatory detention offense can prevail on a challenge to their removability on that ground, or the government can withdraw the charge against them. In both cases, the individual would no longer be detained under Section 1226(c) after the mandatory detention charge was dismissed or withdrawn. To account for these possibilities, we looked at whether any of the individuals with 1226(c) offenses had a bond hearing prior to being detained for six months. If an individual had a bond hearing, we could reasonably assume that the government did not treat them as detained under Section 1226(c) when he or she became a class member (that is, when their detention exceeded six months). Conversely, if they had a Section 1226(c) charge and did not have a bond hearing prior to six months, we could reasonably assume that they were Section 1226(c) subclass members.

15. To determine whether class members had bond hearings prior to six months of detention, we relied on information contained in the ICE and EOIR databases. This analysis was conducted by a volunteer attorney, Fatima Alloo, under my direction and supervision. We first determined the initial date of detention for class members by consulting the ICE spreadsheet, which contains the book-in dates for class members. We then calculated the date on which an individual qualified as a class member by adding 180 days to the book-in dates.

16. We then exported information from the Bond Table and Case Table Date from the EOIR Access

database. Because the Bond Table identifies detainees by reference to a number known as an IDN case number rather than an A#, we used the Case Table (which contains both IDN case numbers and A#s) to match the information from the Bond Table with the information drawn from the ICE database. We were then able to create a spreadsheet that contained the names, A#s, book-in dates and 180-day dates drawn from the ICE database, and the bond hearing date, decision, "initial bond" and "new bond" amount information drawn from the EOIR Access database. We then analyzed the dates for when each bond hearing occurred, and removed the people who had bond hearings within their first six months of detention. Where the data was ambiguous, we consulted detainee files to confirm whether a bond hearing had occurred (or if, as the data occasionally indicated, the detainee had made an appearance before an immigration judge but the judge had determined that he or she lacked authority to release the individual because he was subject to mandatory detention). The resulting list contained 464 unique individuals whom we categorized as falling within the 1226(c) subclass.

17. That number, which reflects that roughly half of the class are subject to 1226(c), is consistent with my and my co-counsel's experience in interviewing large numbers of class members over the course of the last several years.

18. We tested the accuracy of our method for determining membership in the Section 1226(c) Subclass through actual review of a sample of the files of individuals we had identified through this method. That review confirmed that the individuals we identified had

been subjected to mandatory detention and were members of the Section 1226(c) subclass. Several of the individuals selected from the sample are described in the "mandatory detention" section of Mr. Arulanantham's declaration.

Identifying Individuals in the 1231(a) Subclass

19. Section 1231(a) subclass members include people who have an administratively final order of removal, but who continue to litigate their removal cases either through filing a motion to reopen ("MTR") or some other mechanism.

20. We made several unsuccessful attempts to identify the Section 1231(a) subclass members. We first consulted information in the Applications Table in the EOIR database, as well as information in class members' A files, to determine which class members had filed MTRs. We next looked for information in the database that evidenced the individual was: (1) someone who filed an MTR to challenge a final order after they had been detained for 180 days; (2) someone who filed an MTR before the 180-day mark, but whose MTR remained pending after 180 days; or (3) someone whose MTR was denied prior having been detained 180 days, but who had appealed and received a stay of removal, and the appeal remained pending after 180 days.

21. Despite investing significant time and effort to identify individuals within the Section 1231(a) subclass using these and other methods, we concluded that the information produced to date by Respondents during discovery does not provide a reliable, formulaic way to identify persons within the Section 1231(a) subclass

the way we could for the 1225(b) Subclass and 1226(c) Subclass. Our conclusion was based on a variety of reasons, including because the database information regarding motions to reopen and stays appears to be inconsistent and incomplete.

Identifying Individuals Who Do Not Fit Within The Subclasses

22. Based on the information produced by Respondents, 83 of the 1,026 people that Respondents identified as class members do not, in fact, appear to be class members for one or more of three reasons: (1) they had not been detained for more than 180 days; (2) their removal cases had completed, and they had no active removal proceedings during the entire time of their detention, even though they were detained longer than 180 days; and (3) they had active removal cases during their detention, but their cases completed prior to their 180th day of detention.

23. The EOIR and ICE database records for 2 of the 1,026 people identified by Respondents as class members evidence that they spent less than 180 days in detention. Those individuals have not been considered class members for purposes of this analysis, or the analysis of Petitioners' expert, Dr. Susan Long.

24. The EOIR and ICE database records for 24 of the 1,026 people identified by Respondents as class members do not appear to contain any evidence of active court proceedings, at any level, during the course of their detention. Those individuals have not been considered class members for purposes of this analysis, or the analysis of Petitioners' expert, Dr. Susan Long.

25. In light of these discoveries, we also examined the database records to determine if they included individuals who had been detained more than 180 days in detention, but who had no active removal proceedings after their 180th day of detention. To determine this from the database, we compared the dates of detainees' 180th day of detention to the dates on which their cases completed. If a detainee's case was completed prior to the 180th day of detention, then he or she did not qualify as a class member because he or she was not in active removal proceedings after the 180th day of detention. The EOIR and ICE database records for 57 of the 1,026 people evidence met that criteria, and thus those individuals have not been considered class members for purposes of this analysis, or the analysis of Petitioners' expert, Dr. Susan Long.

Detention Center and Immigration Court Information

26. I am familiar with the conditions in the immigration detention centers and case processing for detained immigrants through my first-hand experience and communication with immigration detainees, attorneys and legal service providers, and ICE officials. During the past two and a half years, I have spent extensive time visiting immigration detainees in the Mira Loma, Adelanto, Theo Lacy, Santa Ana and Musick detention centers. I have also been on "tours" allowing me to inspect the interior portions of Mira Loma, Adelanto, and Musick detention centers, and on separate occasions, have also been to the interior portions of Mira Loma and Adelanto in order to conduct presentations. I would conservatively estimate that I have met with at least 100 detainees in these facilities. I also communicate regularly with detainees at these

facilities by letter and by phone. In addition, I regularly communicate with immigration attorneys and legal service providers who have clients or provide services in these detention centers, as well as ICE officials who oversee these facilities, regarding conditions at the detention centers and issues related to individual detainees' cases.

27. Based on my experience, I believe the bed space capacity for the Adelanto, Theo Lacy, Musick and Santa Ana City Jail facilities is approximately 2,100-2,500.

28. A true and correct copy of an email dated September 11, 2012, from Department of Justice attorney Victor Lawrence to my co-counsel Ahilan Arulanantham is attached as Exhibit O. The email reports that, in 2012, the average daily population for the Los Angeles-area facilities is as follows: Theo Lacy (448); Musick (228); and Santa Ana (190). ICE officials have informed me that, following the closure of the Mira Loma facility and the subsequent transfer of many of its detainees to Adelanto, the Adelanto facility is currently operating near or at its bed space capacity of approximately 1,200-1,300.

29. Based on my experience, I believe that there are currently at least five immigration judges in the Los Angeles Immigration Court who hear detained cases regularly or exclusively. In addition, based on the deposition testimony of Assistant Chief Immigration Judge Fong in this case, I understand that additional immigration judges may hear detained cases or hearings when there is a substantial backlog on the detained docket. Since approximately November 6,

2012, counsel for Respondents Sarah Wilson has provided to me the hearing notices for bond hearings conducted pursuant to the preliminary injunction order in this case. Based on my review of the hearing notices and my personal experience attending several *Rodriguez* bond hearings in the past two months, I believe that bond hearings conducted pursuant to the *Rodriguez* preliminary injunction since November 6, 2012 have been heard by the five judges who ordinarily hear detained cases.

Reinstatement and Visa Waiver Cases

30. In the course of the parties' meeting and conferring pursuant to Local Rule 7-3 with respect to the instant motion, counsel for Petitioners informed Respondents that they intend to move for summary judgment on behalf of all class members, including individuals who have a prior final order of removal reinstated and are in withholding-only proceedings ("reinstatement cases"), and individuals who were admitted to the United States through the visa waiver program and are in asylum-only proceedings ("visa waiver cases"). On January 24, 2012, I spoke by phone with counsel for Respondents, Theodore Atkinson and Sarah Wilson, along with my co-counsel Ahilan Arulanantham, as part of the parties' meet and confer meetings. Mr. Atkinson stated that Respondents would oppose Petitioners' motion with respect to reinstatement and visa waiver cases on the ground that, in Respondents' view, the class definition applies only to people in removal proceedings under 8 U.S.C. 1229a, and that individuals detained pending adjudication of their reinstatement and visa waiver cases fell outside the class definition because they are not in "removal

proceedings" conducted under Section 1229a. In that conversation, we informed Mr. Atkinson that we would seek an order from the Court specifying that those individuals are class members entitled to the same relief as other class members.

Cost of Immigration Detention

31. In its "Annual Performance Report" published on February 13, 2012, the Department of Homeland Security ("DHS") estimated that the average daily cost for a bed space at an immigration detention center is $122. A true and correct copy of excerpts of the DHS "Annual Performance Report" is attached hereto as Exhibit C.

32. According to Dr. Long's Expert Report, the studied class members were detained for approximately 184,067 aggregate days during the year following their 180th day in detention. Based on the average daily cost of bed space as reported by DHS, approximately $ 22,456,174 was spent on detaining the studied class members during the year following their 180th day in detention. This significantly underestimates the total cost over time of detaining class members because, as Dr. Long explains in her Expert Report, many class members are detained for more than 18 months.

33. According to Dr. Long's Expert Report, the average period of incarceration for studied class members who won their cases was 342 days, and 509 days for the studied class members who won after proceedings at the BIA. Based on the average daily cost of bed space as reported by DHS, the average cost of detaining the studied class members who won their

cases was approximately $ 41,724 per person. If such individuals had been released after their 180th day of detention, the cost savings to the government would have been approximately $ 19,764. For class members who won after proceedings at the BIA, the average cost was $ 62,098 per person. If such individuals had been released after their 180th day of detention, the cost savings to the government would have been approximately $ 40,138.

Documents

34. A true and correct copy of the "ISAP II Annual Report—Contract Year 2010" by BI Incorporated is attached as Exhibit D. The document was produced by Respondents in discovery in this matter.

35. A true and correct copy of the "ISAP II Annual Report—Contract Year 2011" by BI Incorporated is attached as Exhibit E. The document was produced by Respondents in discovery in this matter.

36. A true and correct copy of a memorandum dated February 28, 2011 and entitled "Alternatives to Detention Program Participant Enrollment Guidance" by Gary Mead is attached as Exhibit F. The document was produced by Respondents in discovery in this matter.

37. A true and correct copy of a table entitled "Median Time Intervals for Merit Terminations of Administrative Agency Appeals" from the report entitled "Judicial Business of the United States Courts 2011" is attached as Exhibit G.

38. A true and correct copy of excerpts of a report entitled "Executive Office for Immigration Review FY 2011 Statistical Yearbook" is attached as Exhibit H.

39. A true and correct copy of excerpts of a report entitled "Pretrial Release and Misconduct in Federal District Courts, 2008-2010" by U.S. Dep't of Justice—Bureau of Justice Statistics is attached as Exhibit I.

40. A true and correct copy of excerpts of the "Immigration Court Practice Manual" by the Office of Chief Immigration Judge, Department of Justice is attached as Exhibit J.

41. A true and correct copy of "Respondents' Answers To Plaintiff's First Set Of Requests For Admission To Respondent Department Of Justice" is attached as Exhibit K. The document was produced by Respondents in discovery in this matter.

42. A true and correct copy of "Expert Statistical Report of Dr. Chester I. Palmer" is attached as Exhibit L. The document was produced by Respondents in discovery in this matter.

43. A true and correct copy of "Rebuttal Expert Statistical Report of Dr. Chester I. Palmer" is attached as Exhibit M. The document was produced by Respondents in discovery in this matter.

44. A true and correct copy of a sample letter regarding "Custody Status Review" is attached as Exhibit N. The document was produced by Respondents in discovery in this matter.

I declare under penalty of perjury of the laws of the State of California and the United States that the fore-

going is true and correct to the best of my knowledge and belief. Executed this 8th day of Feb., 2013 in Los Angeles, California.

/s/ MICHAEL KAUFMAN
MICHAEL KAUFMAN

Exhibit C: U.S. Department of Homeland Security Annual Performance Report

Fiscal Years 2011-2013

[SEAL OMITTED] Homeland Security

Our Vision

A homeland that is safe, secure and resilient against terrorism and other hazards.

About this Report

The U.S. *Department of Homeland Security Annual Performance Report for Fiscal Years (FY) 2011 - 2013* presents the Department's performance measures and applicable results, associated performance targets for FY 2012 and FY 2013, and provides information on the Department's Priority Goals.

For FY 2011, the Department is using the alternative approach—as identified in the Office of Management and Budget's Circular A-136—to produce its Performance and Accountability Reports, which consists of the following three reports:

- ***DHS Annual Financial Report***: Publication date - November 11, 2011.
- ***DHS Annual Performance Report***: Publication date—February 13, 2012. The *DHS Annual Performance Report* is submitted with the Department's Congressional Budget Justification.
- ***DHS Summary of Performance and Financial Information:*** Publication date—February 13, 2012.

When published, all three reports will be located on our public website at:

http://www.dhs.gov/xabout/budget/editorial_0430.shtm.

For more information, contact:

Department of Homeland Security
Office of the Chief Financial Officer
Office of Program Analysis & Evaluation
245 Murray Lane, SW
Mailstop 200
Washington, DC 20528

Information may also be requested by sending an email to par@dhs.gov or calling (202) 447-0333.

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Appendix B: Program Evaluations

Department of Homeland Security
U.S. Immigration and Customs Enforcement
Salaries and Expenses
Justification of Program Changes
(Dollars in Thousands)

Program Decrease 3: Reduction in Detention Beds to 32,800
PPA: ERO - Custody Operations
Program Decrease: Positions 0, FTE 0, Dollars $(53,436)

Funding Profile

	FY 2011 Actual Obligations			FY 2012 Enacted Budget Authority			FY 2013 Requested Budget Authority		
	Pos	FTE	Dollars ($000)	Pos	FTE	Dollars ($000)	Pos	FTE	Dollars ($000)
Current Services Level	[redacted]								1,514,020
Program Decrease									(53,436)
Total Request	-	-	1,456,825	-	-	1,514,020	-	-	1,460,584

Description of Item

The Budget reduces ICE detention capacity to 32,800 detention beds. ICE will prioritize the detention of criminal aliens and those who fall into other priority categories including repeat immigration law violators, recent border entrants and immigration fugitives in FY 2013. As ICE continues to focus on criminal and other priority cases, the agency also anticipates reducing the time removable aliens spend in detention custody.

While shifting some resources to Alternatives to Detention to ensure the most cost effective use of Federal resources, the Budget proposes flexibility to reallocate funding as needed to detain all highrisk aliens apprehended by ICE. Consistent with its stated enforcement priorities and recent policy guidance, ICE will continue to focus detention and removal resources on those individuals who have criminal convictions or fall under other priority categories. At the same time, ICE will enhance the effectiveness of Alternative to Detention for low risk individuals, monitoring them at a lower per day cost than detention.

The FY 2013 budget request reflects an average bed rate at a rate of $122.00 per day that has been held constant from FY 2012 due to ICE's concerted effort to make detention and removal practices more efficient. ICE is planning on offsetting increases in detention contract and healthcare costs by maximizing the use of contracts with guaranteed minimums which provide reduced or free beds after occupying the minimum number of beds on the contract.

The FY 2013 bed rate does not include the potential impact of Department of Labor (DOL) service contract rate

adjustments. Beginning in FY 2012, ICE may face increased annual costs due to a change

Exhibit D: ISAP II Annual Report
Contract Year 2010

BI Incorporated

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November 6, 2010

Teamwork was a unifying theme for BI Incorporated and our customer in implementing the new Intensive Supervision and Appearance Program II (ISAP II) beginning November 6, 2009. After operating ISAP I for the Department of Homeland Security (DHS) for five-plus years, we are honored that the Alternatives to Detention (ATD) unit of Enforcement and Removal Operations (ERO) selected BI to manage ISAP II. BI is proud to have helped DHS and its supervisory units develop, manage and refine ISAP I, and now operate ISAP II.

Since program inception, we have focused on keeping participants engaged in the immigration court process so they adhere to ERO guidelines and final court orders. That focus supports ERO's mission to mitigate alien flight risk and promote immigration court order compliance.

During the ISAP I contract, BI managed its duties with professionalism and a value orientation. For example,

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We are proud of how we managed our responsibilities with DHS for more than six years. We are also pleased to have supported our customer's growth and changing needs while generating significant program cost improvements. Every year, we have refined our systems in concert with DHS requirements and requests.

As the program has grown, we have grown our team of immigration-focused managers, office staff and training personnel dedicated to this important program. One of our strengths is our corporate-level understanding of this program. Most of our executive team is the original team from 2004, which has contributed to consistent program delivery.

As always, BI remains focused on being fair, firm and consistent with program participants. This has been a cornerstone of our success and will continue to be our focus moving forward. As a result, trust and accountability are maintained and outcomes enhanced in immigration court appearances and compliance with final court orders—the primary goals of ISAP II's full-service supervision program.

On the following pages of this CY2010 report, you will find details about BI and our history of operating this program as well as detailed court appearance and outcomes data, lessons learned, recommendations, and Non-Governmental Organization collaboration for the first year of ISAP II. Please note, a majority of this report focuses on the full-service supervision component of ISAP II.

I would like to thank ATD for selecting BI, and for the opportunity to manage the ISAP II contract moving forward.

Sincerely,

/s/ BRUCE J. THACHER
BRUCE J. THACHER
President & Chief Executive Officer
BI Incorporated

The Department of Homeland Security's (DHS) paramount objective is the security of our nation. One facet of national security is the enforcement of United States immigration laws and cases in a fair and consistent manner. DHS issues a charging document to aliens that violate immigration laws and transfers jurisdiction of these cases to the Executive Office for Immigration Review (EOIR), which maintains 57 courts nationwide. DHS then decides to detain or release aliens to community supervision.

With limited bed space, DHS must reserve detention for aliens it considers highest risk. As a result, DHS supervises a large majority of individuals involved in the EOIR process within local communities.

The Intensive Supervision Appearance Program (ISAP) began as a DHS pilot in 2004. It was intended to serve as an alternative to detention focused on increasing immigration hearing appearance and compliance with final orders of removal. Today, at the close of the first year of

ISAP II, the full-service supervision component is important in managing non-detained aliens as they progress through the immigration court process. The full-service supervision component has very clear objectives, including:

- Delivering a systematic approach to supervision and case management for non-detained aliens.
- Ensuring that program participants comply with release conditions as determined by ERO.
- Focusing on guiding ISAP II participants to attend immigration court hearings.
- Maximizing compliance with immigration court orders, including orders of removal.
- Reducing absconder rates of the non-detained alien population.
- Providing accurate, reliable electronic supervision products and services.

ISAP II INVOLVES TWO TRACKS

ISAP II involves two segments: full-service supervision and technology-only services. ERO refers participants to one of these options based on assessed risk and circumstance. BI supplies the electronic monitoring technology—including GPS tracking and telephonic reporting systems—and 24/7 monitoring support services for the technology-only portion of ISAP II. ERO manages all other facets of the technology-only program. In CY2010, ERO referred 5,782 participants to the technology-only program. By the end of the base year, ERO terminated 2,024 participants from this program.

A majority of BI's ISAP II effort involves the full-service supervision program. This program includes intensive case management, supervision, electronic monitoring and individual service plans. These service plans cover legal services, translation needs, transportation services, travel documents, departure plans and referrals to appropriate community services. By coordinating these services and plans, ISAP II helps mitigate flight risk and guide the participant through the immigration court process.

In CY2010, ERO referred 19,996 participants to ISAP II's full-service supervision. At the end of the base year, 13,429 were still active in the program. Of these active participants, 47% were monitored via telephonic reporting and 28% were monitored using GPS. The remaining 6,567 inactive participants exited the program because they had been granted relief or removed from the United States; absconded; removed for reasons other than absconscion; or are still in the process of being removed.

A total of 25,778 participants were referred to ISAP II in CY2010. Of those, 78% were full-service supervision participants and 22% were technology-only participants.

SUCCESS STORY

ISAP II and ERO Cooperate on Successful Departure

ISAP II full-service supervision staff helped place a homeless participant at a housing shelter. The individual asked to depart voluntarily, but he did not have funding for a plane ticket. Cooperative efforts enabled the participant to remain in the community. He was provided with a stable living environment at the shelter (where home visits were completed), and he appeared at his

scheduled court date. ERO supported funding for his ticket, and he has since departed for his home nation.

FULL-SERVICE SUPERVISION PROGRAM OUTCOMES DEMONSTRATE POSITIVE RESULTS

Prior to ISAP I inception, EOIR court appearance rates were poor. In fact, in this report, we include a comparison of ISAP II full-service supervision data against two measures: a 2003 Office of Inspector General (OIG) study* and the 2003 and 2010 EOIR Statistical Year Book**. Both 2003 data sources pre-date ISAP I.

The 2003 OIG study found aliens who had not received an EOIR court order (Pre-Order) appeared at only one in three EOIR hearings of final decision. In addition, aliens complied with only 13% of final EOIR court orders in 2003. The 2003 EOIR Statistical Year Book found 59% of Pre-Order aliens attended final court hearings.

When we launched ISAP I in 2004, we heard from Non-Governmental Organizations (NGO) and immigration experts that often aliens involved in EOIR either did not understand the immigration court system or, in some cases, they did not trust it due to negative experiences in their home nation. As a result, BI has always focused on treating participants with respect and dignity, but also making it clear that they are accountable for meeting EOIR requirements.

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* *The Immigratoin and Naturalizatoin Service's Removal of Aliens issued Orders, Report # 1-2003-004.*

** *Executive Office for Immigration Review, FY 2010 Statistical Year Book.*

The participant-focused approach of full-service supervision has proven successful at building trust in the immigration court process and reducing barriers to court appearances. In turn, the program has produced positive results in guiding program participants to attend all immigration court hearings, including the all-important hearings involving final court decisions. In fact, for all EOIR hearings, full-service supervision program achieved a participant compliance rate of 99% for individuals considered active in the program. Of 15,794 court cases for active full-service supervision participants in CY2010, there were only 154 failures to appear. For hearings that involved final orders for active full-service supervision participants in CY2010, the program achieved a compliance rate of 94%, impressive rates when compared to data recorded prior to ISAP I development in 2004.

Many full-service supervision participants are still involved in the program after EOIR has issued a final court order. Their removal may be pending or they may be appealing the decision. In CY2010, 6,567 participants were terminated from the program. Of these inactive participants, 69% had final orders or were verified departures. At the end of CY2010, about half of these individuals had complied with final orders; only 7% had not. The remaining participants were still pending.

ERO developed a more broad approach to determining the success of full-service supervision. The agency developed 13 termination codes for inactive participants, with nine factors it considers "favorable" outcomes and four variables it considers "unfavorable." Of the 6,567 full-service supervision participants terminated from the program in CY2010, 87% were favorable outcomes; 13%

had absconded or violated program guidelines and were removed from the program.

BI outcomes data found that of the 4,552 participants who had final EOIR orders or verified departures, 47% had complied with the orders. A large number of participants, 46%, were still in process while only 7% had not complied.

BI also looks at outcomes data for inactive participant compliance with final court orders compared to the OIG data from 2003, before ISAP I was implemented. The OIG study found only 13% of a comparable group, Pre-Order participants, complied with final orders. In contrast, 84% of Pre-Order full-service supervision participants complied with final EOIR orders.

SUCCESS STORY

ISAP II Staff Assist Participant with Basic Life Needs

A participant reported to full-service supervision for a weekly scheduled visit and advised that until she was paid on Friday, she had nothing in the refrigerator to feed her family. The participant was very embarrassed and had great difficulty asking for help. Staff contacted several resources until one was found that could assist with providing food immediately. The participant was able to obtain a food basket for her family that day.

KEY COMPONENTS OF ISAP II FULL-SERVICE SUPERVISION

There are several core factors that contribute to the success of this program, including:

Collaboration: This program works because BI, Alternatives to Detention headquarters personnel, and local ERO are on the same page. Communication is regular and structured, yet each local ERO has the ability to reach out for immediate support.

Leadership: BI has developed a strong core team for full-service supervision. Many offices are led by BI program managers who have been involved since the inception of ISAP I. Other individuals are former case specialists trained and promoted to leadership roles. Others joined BI after years working in the immigration system. In addition, the BI executive management team is deeply involved in the program, and most executives have been involved since ISAP I was formed in 2004.

Case management: Direct case management and BI's case specialists remain critical to full-service supervision. Case specialists are the daily link to participants. They maintain frequent contact with participants throughout their involvement in the program. They help establish a bond of trust with the participant while also ensuring the individual is aware of requirements and consequences of non-compliant activity. Importantly, the case specialists reflect the diversity of the population served in each office.

Program flexibility: ISAP II full-service supervision is a valuable tool for ERO in managing the non-detained docket. BI assists ERO in refining the program by applying

best practices and implementing what has been proven to work in the field. This flexibility has enabled ERO to manage larger caseloads and has primed the program for future growth.

Language: BI issues materials in multiple languages to help participants understand and navigate the immigration system. Each BI office includes staff members who are multi or bi-lingual, with particular emphasis on languages prominent in that geographic location. During CY2010, 77% of the program case specialists were at least bi-lingual.

Training: Training is ongoing and involves continuous refreshers in electronic supervision technology for both BI and ERO staff. BI staff is regularly updated on immigration policies and procedures.

Program consistency: The ISAP II full-service supervision program, as shown in the program design segment of this report, is highly structured. Yet, it is flexible to meet the unique risks and needs of participants.

"ISAP II has provided the benefit of reducing detention costs while monitoring and encouraging ICE respondents to report to immigration court as required."

- ERO Field Office Director

BI works closely with ERO to ensure program delivery remains consistent.

Participant treatment: As mentioned earlier, a core principle of the program is treating participants with respect and dignity while also holding them accountable. With such high expectations come outstanding results.

NGO relations: Each office maintains an online directory of local community service providers, including health, legal, transportation, and other services that stabilize the participant in the community. By stabilizing the life of an individual, the participant is more accepting of the immigration system and more likely to comply with program guidelines.

Community relations: BI program managers maintain a dialog with community officials to ensure the community is aware of the services provided.

Consistent reporting: BI program managers conduct ongoing meetings with ERO to provide reports developed from BI's proprietary case management system, BI AccuTrax®.

Quality control: BI compliance specialists audit full-service supervision offices to ensure compliance with contract guidelines.

Cultural diversity: Participants from 171 nations in were served CY2010. BI achieves this by hiring culturally diverse staff, providing materials in multiple languages, and connecting participants with supportive community services.

SUPPORTING IMMIGRATION COURTS WITH EFFICIENCY

Immigration court intakes increased 12% from FY2006 and FY2010, according to the EOIR 2010 Statistical Year Book. With court intakes reaching almost 400,000 in FY2010, programs that drive efficiency are critical.

In the base year of CY2010, ISAP II full-service supervision produced a 99% attendance rate at all EOIR hearings and a 94% attendance rate at hearings of final court decision. Through a well-coordinated approach to case management, the program has greatly reduced EOIR failures to appear at hearings, helping to streamline a very busy EOIR docket.

In addition, immigration judges must be satisfied that notice of hearing "time and place" is provided to an alien or their representative prior to issuing a removal or in absentia decision. Judges know with confidence full-service supervision participants have received fair notice.

ISAP II full-service supervision also prepares participants for eventual departure as they proceed through the immigration court process. By gathering travel documents early in the supervision process and developing travel plans, participants may decide to depart voluntarily in advance of a final decision. This process plays an important role in ensuring participants have access to resources regarding various options and consequences, including voluntary departure.

LESSONS LEARNED AND RECOMMENDATIONS

This CY2010 report includes several lessons learned and recommendations. Most importantly, we see from the data and hear feedback from ERO that ISAP II full-

service supervision is working as intended. Participants are attending court hearings at a high rate and comply with final court orders at rates higher than those that predate the program.

We have also learned many key points that will help the program adapt and evolve. For example, ongoing communication with ERO and influential stakeholders such as NGOs is critical. In addition, we have learned that continuous innovation will fine tune the program. By exploring pilot programs, such as expediting cases in EOIR or the use of bond fees, validated best practices can be expanded to other offices.

BI bases its recommendations on experience and lessons learned. Some of these recommendations are broad, such as the need to continually train staff and ERO. Others are tactical, such as the need for a formal legal presentation for participants at intake and orientation.

ISAP II is now poised to expand its supporting role for ERO. After a smooth and rapid expansion in November 2009, 35 offices are now in operation and more are planned for the future. BI stands ready to manage these non-detained aliens when they are referred to community supervision.

SUCCESS STORY

ISAP II Aids in Verified Departure

A participant was released from detention and enrolled in the program in order to care for her two young sons. Full-service supervision staff connected the participant with community resources and assisted her with plans for self-deportation. She sent her belongings to her home country and obtained travel documents for herself and

her sons. The participant departed the U.S. within 30 days which was verified with the Automated Tracking System.

"By providing an alternative means of supervision, the ISAP II program has allowed deportation officers to focus on other tasks. As a result more time is dedicated to actual case management and communication with foreign consulates. This in turn has led to an increased rate of removal."

- Deputy Field Office Director

ISAP II CONTRACT YEAR 2010: BY THE NUMBERS

19 new full-service supervision offices opened for a total of **35**

More than **14,000** participants transitioned during program implementation

85 new employees trained during program start-up

More than **10,000** outbound calls made to transition telephonic reporting

171 home nations represented by program participants

Referrals to more than **1,500** community partners and Non-Governmental Organizations

16 languages spoken by ISAP II staff

19,996 participants referred to full-service supervision

5,782 participants referred to technology-only services

ISAP II: AN ALTERNATIVE TO DETENTION PROGRAM

After two reports from the Office of Inspector General (OIG) in 1996 and 2003, the need for effective alternatives to detention became clear. Successfully removing non-detained aliens was identified as an area of weakness

within the Immigration and Naturalization Service. Specifically, the two studies found alien removal rates were 11% and 13%, respectively. The 2003 OIG report made several recommendations for improvement, including expansion of a pilot program called the Appearance Assistance Program (AAP). The AAP pilot was administered by the Vera Institute of Justice from 1997 to 2000. It focused on supervising individuals in the community who were progressing through removal proceedings and aimed to increase hearing appearance rates and compliance with final orders of removal. The pilot showed promising results as a community supervision program for aliens moving through the immigration court process (see Appendix for ISAP II comparison to Vera results).

The lessons learned from the AAP were applied in the launch of another pilot program—the Intensive Supervision and Appearance Program (ISAP). The original ISAP program, now referred to as ISAP I, began in 2004 and concluded in November 2009. BI Incorporated, along with government officials, had the privilege to operate ISAP I and grow the program from a pilot to a valued supervision program. After a competitive bidding process, DHS's Alternatives to Detention (ATD) unit of Enforcement and Removal Operations selected BI to manage a new program called ISAP II. This new program combined the best of intensive case management processes of ISAP I with another supervisory program called the Enhanced Supervision and Reporting program. BI began operating ISAP II for ATD on November 6, 2009.

"ISAP II allows my staff to concentrate on the most egregious cases and thus ensure removal is imminent."

- Supervisory Detention & Deportation Officer

ABOUT BI INCORPORTATED

Established in 1978, BI Incorporated works with approximately 900 U.S. public agencies nationwide. In addition to managing the Intensive Supervision and Appearance Program II for the U.S. Department of Homeland Security, BI is a national leader in offender monitoring technology, supervision services, community-based treatment services, and reentry and day reporting center programs for adults and juveniles. BI works closely with public officials to reduce recidivism, enhance public safety, and strengthen the communities it serves. To achieve success, BI assesses the risk and needs of individuals it supervises, matches services to address those risks and needs, and partners with supervising agency personnel to monitor compliance with conditions of release. Our approach and focus on objective outcomes have delivered verifiable and consistent results.

BI INCORPORATED ISAP II LOCATIONS

ISAP II Full-Service Supervision Offices:

Atlanta	Newark
Baltimore	New Orleans
Boston	New York City (4)
Buffalo	Orlando
Charlotte	Philadelphia
Chicago	Phoenix
Dallas	Portland
Delray Beach	Salt Lake City
Denver	San Antonio
Detroit	San Bernardino
El Paso	San Diego
Hartford	San Francisco
Houston	Santa Ana
Kansas City	St. Paul
Los Angeles	Seattle
Miami	Washington, D.C.

1996

Office of Inspector General (OIG) report finds 11% compliance among non-detained aliens issued final orders of removal.

1997-2000

Vera Institute of Justice Appearance Assistance Program (AAP) pilot focused on increasing hearing appearance rates and compliance with final orders shows promising results.

2003

A second OIG report finds 13% compliance among non-detained aliens issued final orders of removal.

2006

October: Delray Beach, FL site opened to support Miami office.

2007-2009

The Enhanced Supervision and Reporting (ESR) program is operated as an Alternative to Detention program using electronic supervision and reporting.

2008

August: Santa Ana, CA office opened bringing total ISAP I office count to 14.

2004

July: Request for Proposals released by Department of Homeland Security (DHS) for Intensive Supervision and Appearance Program (ISAP) I pilot.

March: BI Incorporated awarded ISAP I contract for eight pilot sites.

June: Eight ISAP I pilot sites opened.

2007

ISAP I expands to include six additional offices nationwide.

2009

April: Request for Proposals released for ISAP II combining elements of ISAP I with the ESR program.

July: BI awarded ISAP II contract for 15 additional sites in contract base year.

November: BI transitions over 14,000 participants from ISAP I and ESR and begins operating ISAP II.

ISAP II PROGRAM DESIGN

ISAP II assists Alternatives to Detention (ATD) and Enforcement and Removal Operations (ERO) with supervision of unauthorized immigrants involved in the U.S. immigration legal system. ISAP II offers alternatives to detention that allow immigration officials to reserve detention beds for certain higher risk aliens.

ISAP II is highly structured and is designed to facilitate effective services and promote clear communication, rapid response and efficient operations.

The program involves two segments: full-service supervision and technology-only services. ERO refers aliens to one of these options based on assessed risk and circumstances. ISAP II manages participants based on their status within the immigration court system, including:

- Pre-Order: These program participants have not received an order of removal from the immigration court.
- Post-Order: These participants have received a final order of removal from the court.
- Appeal: These participants have received a court decision, but they or the government are appealing the decision.
- Post-Order Custody Review—Reasonable Foreseeable Removal: These individuals have received a court order of removal, completed a custody review, and are likely to be removed in the near future.
- Post-Order Custody Review—Non-Foreseeable Removal: These individuals have also received a court

order of removal and completed a custody review, but it is estimated that they will not be removed in the near future.

SUCCESS STORY

GPS Data Proves Timely in Absconscion Case

A known gang member in the ISAP II full-service supervision program who was under GPS supervision generated a tamper status alert. ERO was notified immediately by telephone while BI staff attempted to contact the participant. All attempts at contact failed and messages sent to the GPS device were not acknowledged.

ERO's response was immediate. A search team went to the participant's known address while additional personnel contacted other known associates and relatives. While the participant evaded attempts at contact, BI staff provided ERO with GPS information specific to the participant's location, direction, and speed of movements. This timely information assisted in the apprehension of the participant who was then remanded to custody.

FULL-SERVICE SUPERVISION

The ISAP II full-service supervision program involves intensive case management, supervision, electronic monitoring, and individual service plans. These service plans include legal, translation, and transportation services as well as plans for travel documents, departure and referrals to appropriate community services. These coordinated services help mitigate flight risk and guide the individual through the immigration court process.

In the ISAP II full-service supervision program, the participant reports to a designated ISAP II office within 24 hours of referral for intake, assessment and orientation.

After the individual service plan is developed, the case management process begins. This involves a combination of office visits, residence verifications, random home visits, employment verifications, and an update of the participant's schedule. The supervision of participants in the full-service program is supplemented with two forms of electronic monitoring—GPS tracking and telephonic reporting. GPS tracking is a more intensive supervision technology, but both of these options provide excellent details about the person's adherence to schedules and supervision plans.

A participant's stage of supervision reflects their stage in the immigration court process. The frequency of reporting to the ISAP II office, home visits, employment checks and use of electronic monitoring correspond to the specific stage of supervision. Additionally, the program is successful because of consistent case management services, including treating the participant with dignity and respect, providing community connections for unique participant needs, and holding the participant accountable.

The full-service supervision program offers structure and flexibility, an approach that produces the desired results: high appearance rates at preliminary immigration court hearings and enhanced compliance to final court orders, including departure if ordered.

PARTNERSHIP IN ACTION

Non-Governmental Organizations provide critical assistance to BI in operating the ISAP II program. These partnerships enhance the success of program participants. Working closely with community-based organizations, the full-service supervision component of ISAP II

provides community referrals to participants on an ongoing basis. Services include locating providers for legal services, food and clothing, substance abuse treatment, mental health needs, medical and dental assistance, disaster recovery (e.g. Haitian earthquake relief), wellness health screenings, translation, homeless outreach and shelters, religious support, public transportation and consulate assistance.

In the base contract year alone, ISAP II worked with more than 1,500 community organizations throughout the ERO areas of responsibility it serves to promote participant success. A small sample of ISAP II community partners includes:

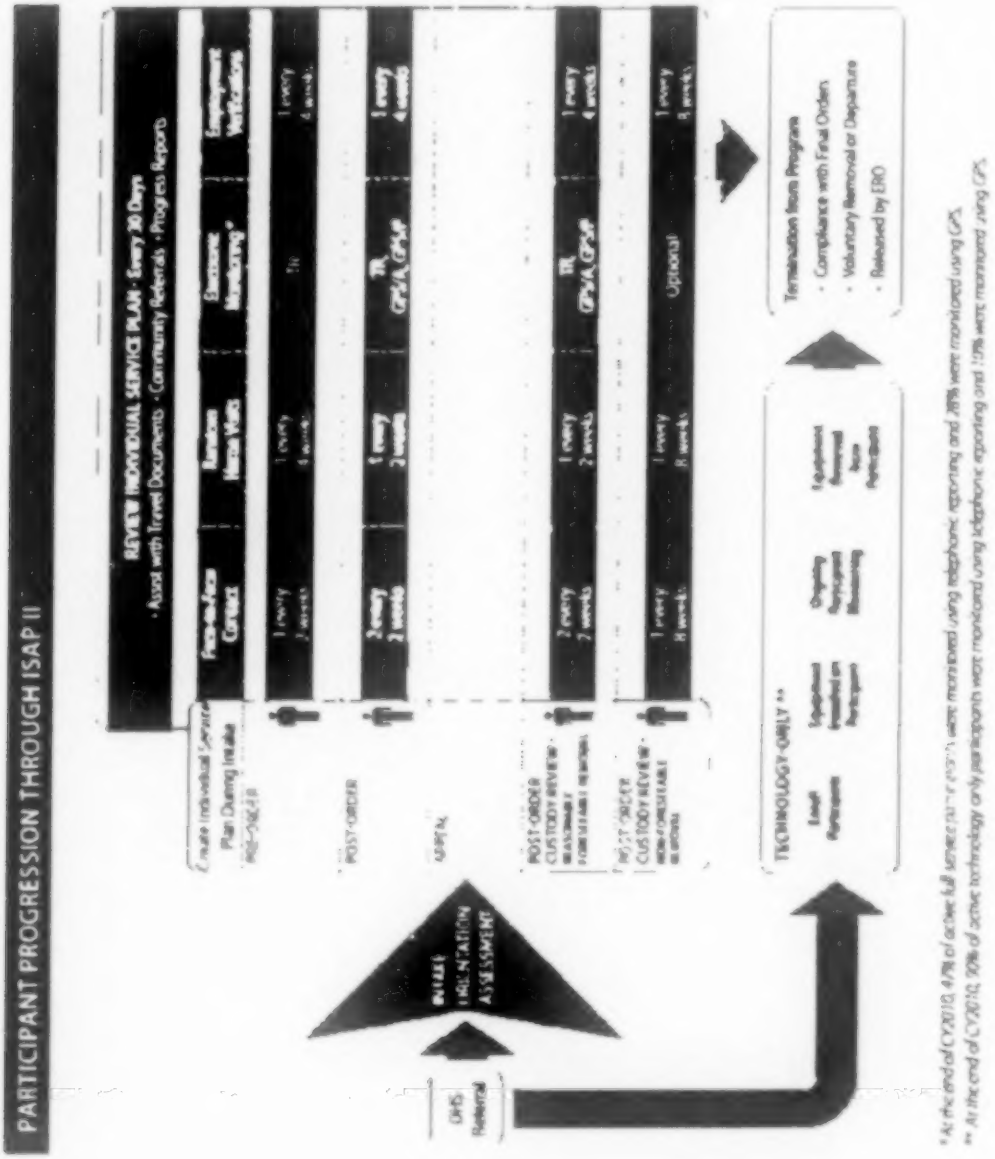
- Catholic Charities
- Legal Services
- Centers for Victims of Torture
- Public Health Department
- Department of Homeless Services
- Public Transportation
- Food Pantry Community Missions
- Salvation Army
- Goodwill Industries
- United Way
- Immigration Counseling Services
- Women, Infants & Children Program

TECHNOLOGY-ONLY SERVICES

Participants involved in the technology-only component of ISAP II do not receive the full-service supervision provided from BI's 35 offices throughout the U.S. The technology-only portion of ISAP II provides ERO personnel nationwide with two tools for enhanced supervision: GPS tracking and telephonic reporting. The GPS tracking system, BI ExacuTrack® One, is a sophisticated ankle-worn device that tracks a participant's movements and reports violations of specific parameters, called exclusion and inclusion zones. The telephonic reporting system, BI VoiceID®, helps officers monitor compliance by making random and scheduled telephone calls to participants. The system identifies participants through a biometric "voice print" and verifies that the individual is where he or she is supposed to be throughout the day.

These supervision services are used at the discretion of ERO. They can be used to reduce face-to-face visits with lower-risk participants or enhance supervision of higher-risk participants where full service supervision is not an option. For ERO offices within proximity of full-service ISAP II offices, BI staff members can assist with participant enrollment, equipment installation and removal. ERO officers manage participant monitoring by logging into BI's secure web portal and responding to violations as needed. BI's technology-only program manager and the BI GuardCenter® provide ERO officers with equipment training and 24-hour a day support.

Participant monitoring and progression through ISAP II continue to be refined by ATD. Participants referred to ISAP II—no matter which of the two program options—are eventually terminated from the program when they comply with final court orders, voluntarily depart for their home country, or are released by ERO.



* At the end of CY2010, 4% of active full service participants were monitored using telephonic reporting and 18% were monitored using GPS.

** At the end of CY2010, 90% of active technology-only participants were monitored using telephonic reporting and 10% were monitored using GPS.

FINDINGS & DISCUSSION

ISAP II provides outcomes to measure if the program is meeting objectives. The following pages review specific findings for ISAP II during CY2010. On page 16, the chart highlights the number of full-service supervision participants referred to ISAP II by Enforcement and Removal Operations (ERO) for the contract year. The total population is segmented into "active participants," or those individuals still being supervised by ISAP II, and "inactive participants," those individuals who exited the program. ISAP II was still supervising a majority of the full-service participants at the end of the contract year.

The charts also indicate the legal status of the ISAP II participant when the person entered the program. Participant classifications include Pre-Order, Post-Order, Appeal, Post-Order Custody Review—Reasonable Foreseeable Removal, and Post-Order Custody Review—Non-Foreseeable Removal. We combine these legal stages in the charts to more simply compare participants who have not received an order of removal (Pre-Order), participants who have received an initial decision (Post-Order and Appeal), and those who have received a final order of removal and completed a custody review (POCR-RFR and POCR-NFR).

On pages 16 and 17, please find data for ISAP II active participants in the full-service supervision program. On pages 18 through 21, data is presented for inactive ISAP II participants in the full-service program. The charts review attendance at all EOIR court appearances and attendance at hearings where final decisions are rendered. We also compare the data for CY2010 against a pre-ISAP benchmark. Finally, on pages 22 and 23, data

is presented for the technology-only component of ISAP II.

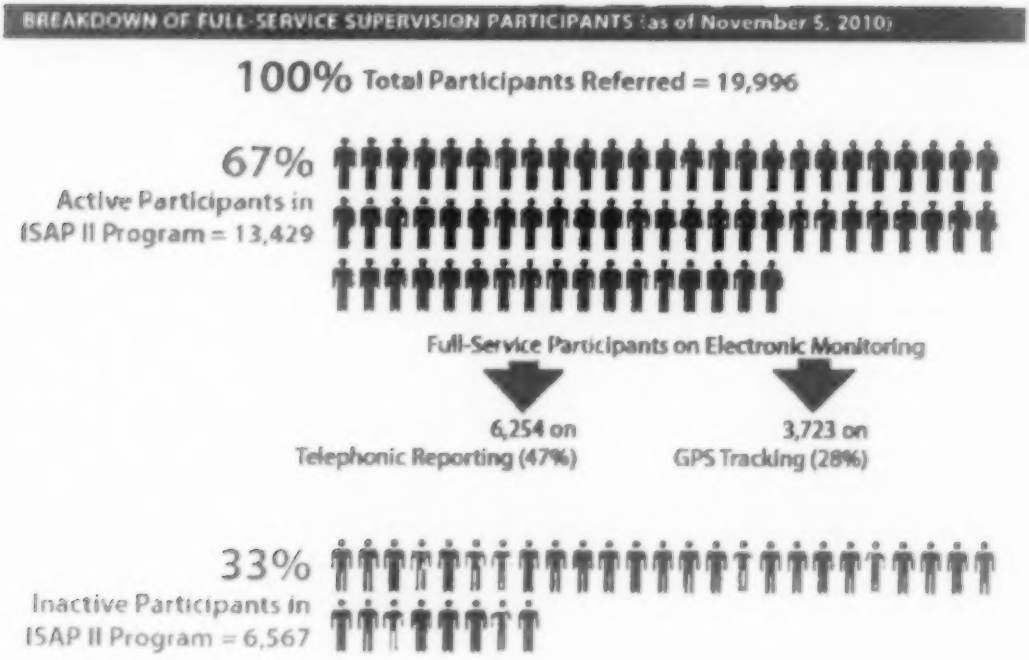
"We are seeing significant, positive results. We are seeing increases in successful voluntary departures, removals, and obtaining travel documents while reducing in absentia cases. Essentially, very few cases end up being non-compliant."

- Supervisory Detention & Deportation Officer

ISAP II YEAREND SNAPSHOT OF FULL-SERVICE SUPERVISION PARTICIPANTS

Enforcement and Removal Operations (ERO) referred 19,996 participants to ISAP II full-service supervision during CY2010. On the last day of the contract year, 13,429, or 67%, of these referrals were still actively involved in the program. Of active full-service participants, 47% were being monitored with telephonic reporting and 28% were being monitored with GPS tracking.

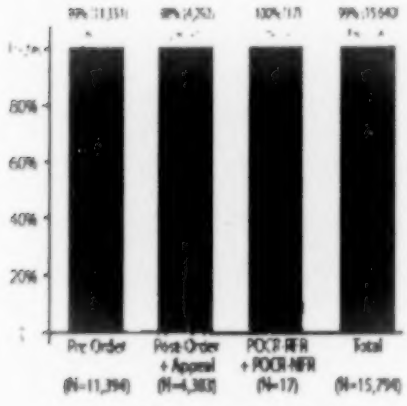
Another 6,567 participants, or 33%, of these referrals were considered inactive participants and had been terminated from ISAP II full-service supervision for one of three reasons: 1) they were granted relief or removed from the United States; 2) they had absconded from the ISAP II program and could not be located; 3) they were being removed from ISAP II for reasons other than absconscion or completion and are still in process. During CY2010, a number of compliant participants were removed from ISAP II by Immigration and Customs Enforcement in an effort to most effectively use Alternatives to Detention resources.



"ISAP II provides ERO with up-to-the-minute information on the whereabouts of potential absconders, assisting our enforcement efforts by greatly increasing our rapid response capabilities."

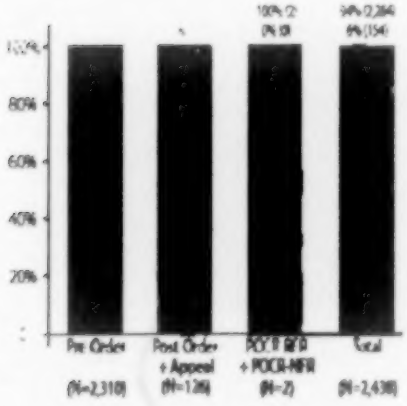
- Supervisory Detention & Deportation Officer

ACTIVE ISAP II FULL-SERVICE SUPERVISION PARTICIPANTS



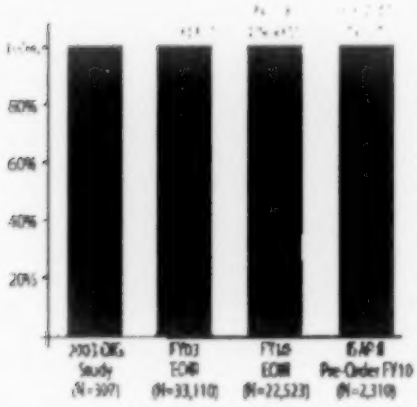
ATTENDANCE AT ALL EOIR HEARINGS WHILE ACTIVE

During CY2010, there were 15,794 immigration court appearances scheduled for ISAP II full-service supervision participants considered "active" in the program. Participants appeared at 99% of these hearings. Pre-Order participants, the largest participant population, appeared at 99% of all immigration court hearings while involved in the program. This high appearance rate reflects positively on the program's ability to keep participants engaged in the immigration court process, a critical step toward successful compliance with final court orders or verified departure.



ATTENDANCE AT FINAL EOIR HEARINGS WHILE ACTIVE

It is important for participants to attend hearings where the immigration court will issue a final order. This is a critical function of ISAP II full-service supervision as it indicates that participants are engaged in the court process and are more likely to comply with the court decision. Of the 2,438 final hearings held for active ISAP II participants, they attended 2,284, a 94% compliance rate. The majority of these hearings involved Pre-Order participants. Of the 2,310 court hearings that involved final orders for Pre-Order participants, 2,157, or 93%, of these individuals attended.



PRE-ORDER ATTENDANCE AT FINAL EOIR HEARINGS WHILE ACTIVE COMPARED TO BENCHMARKS

BI uses two pre-ISAP benchmarks to measure program success. We isolate the comparisons to the ISAP II Pre-Order population. The comparable data sources include a 2003 Office of Inspector General study* and EOIR Statistical Year Book** data from 2003 and 2010. The OIG study recorded a final court appearance rate of 34% for a comparable group. The 2003 EOIR data found a 59% attendance rate, and the 2010 EOIR data recorded a 78% attendance rate. In comparison, the ISAP II Pre-Order population attended final court hearings at a 93% rate.

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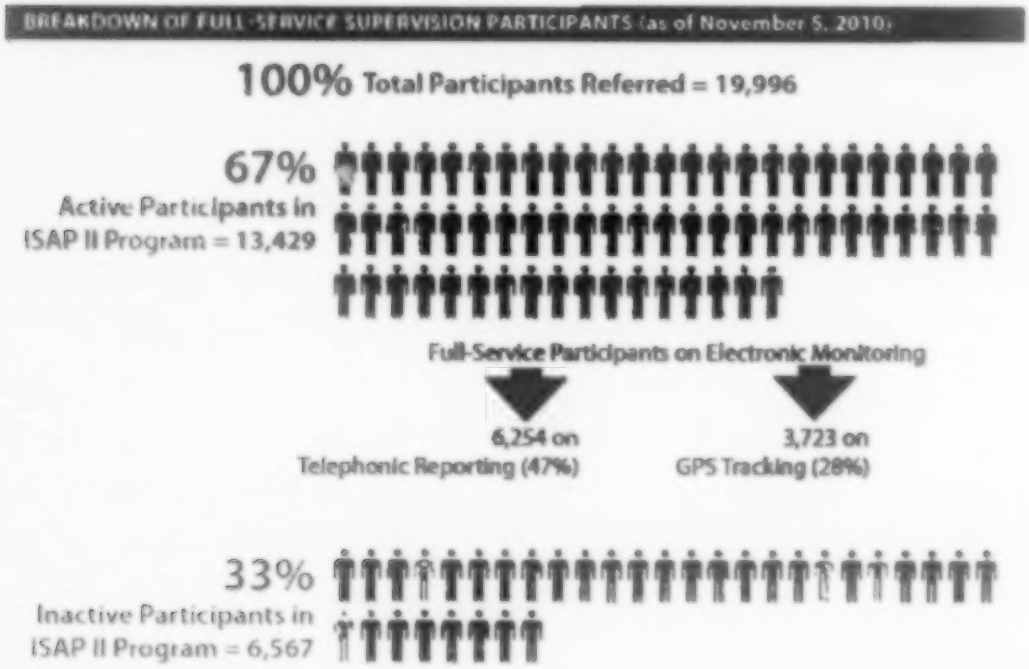
* *Immigration and Naturalization Service's Removal of Aliens Issued Orders, Report #I-2003-004.*

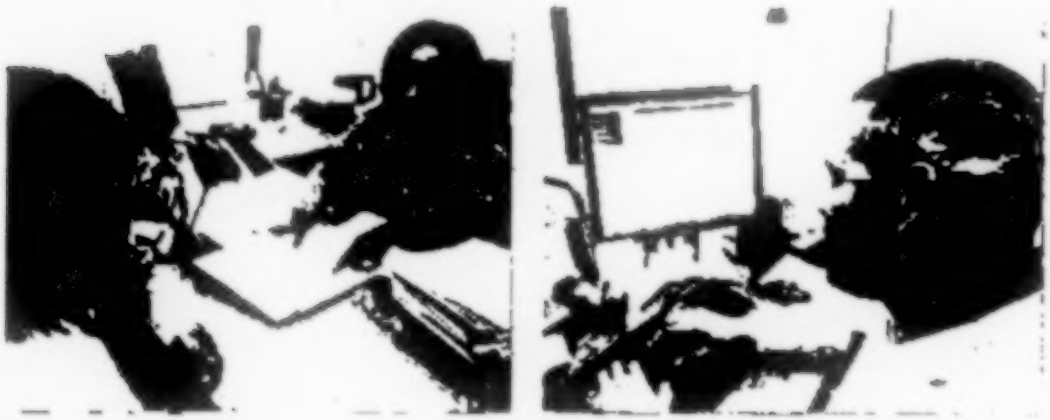
** *Executive Office for Immigration Review, FY 2010 Statistical Year Book. Note change in methodology - administrative closures are no longer included to calculate failure to appear rate. As of 2009 EOIR only uses IJ decisions and orders in absentia.*

INACTIVE ISAP II FULL-SERVICE SUPERVISION PARTICIPANTS

INACTIVE PARTICIPANTS WITH & WITHOUT FINAL EOIR ORDERS

There were 6,567 participants terminated from ISAP II full-service supervision during CY2010. Of these participants, 4,552, or 69%, had final orders of removal or were verified departures. A total of 2,015, or 31%, were participants without final orders of removal.





INACTIVE ISAP II FULL-SERVICE SUPERVERSION PARTICIPANTS

ISAP II CASE TERMINATIONS WITH AND WITHOUT FINAL ORDERS

The following table was developed by Enforcement and Removal Operations (ERO) to examine the reasons for termination for the 6,567 inactive participants who exited the ISAP II full-service supervision program in CY2010. ERO developed 13 variables, nine of which it considers "favorable outcomes" and four of which it considers "unfavorable outcomes". Favorable outcomes include termination types A, B, G, H, I, J, K, L, and M. These ISAP II participants had complied with program requirements, departed the United States or were no longer required to participate by ERO, among other factors. During CY2010, ERO found 86.8% of inactive participants were compliant with program requirements. Unfavorable outcomes include termination types C, D, E and F, where participants absconded or violated program requirements. In CY2010, 13.2% of participants were not compliant with ISAP II requirements and were terminated from the program.

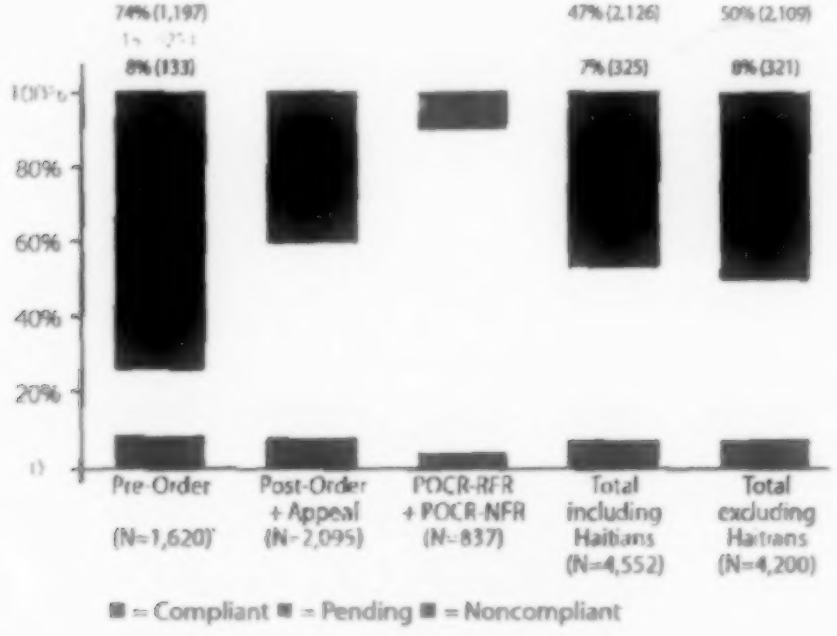
FAVORABLE OUTCOMES			
Type	Description	Total	Percent
A	Departure Verified (Final Order of Removal)	999	15.2%
B	Relief/Benefit Granted (Cancellation of Removal, Adjustment of Status, Asylum, or Admission)	601	9.2%
G	No Longer Required to Participate (As determined by ERO for various reasons)	2,534	38.6%
H	Arrested by ICE for Removal (Final Order, Active Participant)	83	1.3%
I	Pending Departure Verification (Final Order of Removal or Voluntary Departure)	183	2.8%
J	Arrested by Other Law Enforcement Agency	515	7.8%
K	Other (No longer required to report; medical or deceased)	120	1.8%
L	Departure Verified (Voluntary Departure)	156	2.4%
M	Departed the United States while in proceedings	142	2.2%
ISAP II TOTALS		5,703	86.8%

UNFAVORABLE OUTCOMES			
Type	Description	Total	Percent
C	Pre-Order Program Absconder (Terminated from ATD)	432	6.6%
D	Post Order Program Absconder (Terminated from ATD)	325	4.9%
E	Pre-Order Program Violator	61	0.9%
F	Post Order Program Violator	46	0.7%
ISAP II TOTALS		864	13.2%
Total ISAP II Full Service Case Terminations		6,567	100.0%

The subsequent charts on this page take a closer look at the 4,552 inactive ISAP II participants in the full-service supervision program with final orders or verified departures. Charts are shown with and without ISAP II cases when relief was granted. A total of 601 ISAP II participants were granted relief during CY2010.

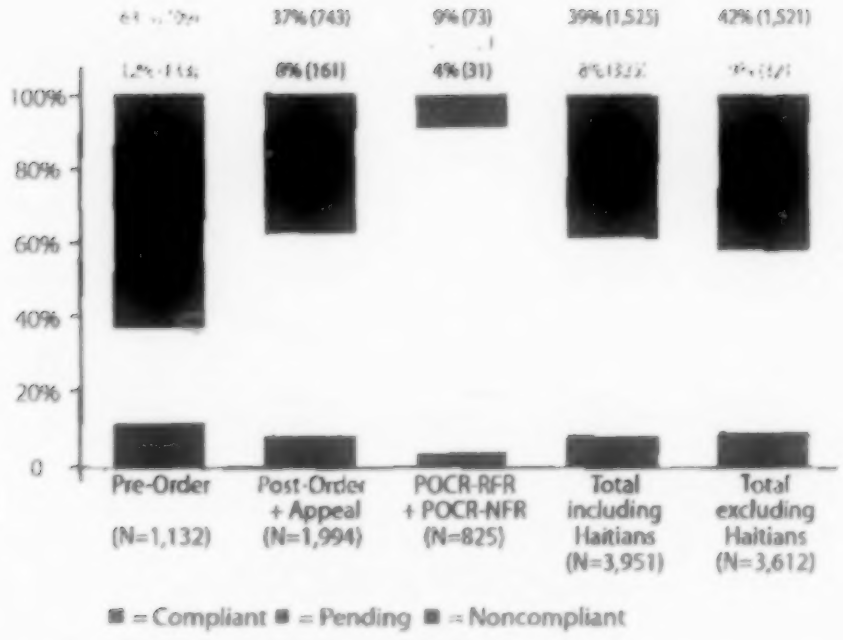
Note: Additional calculations are provided to reflect a unique situation in CY2010, the January 2010 earthquake in Haiti. The figures below provide compliance rates with and without Haitian participants who were adminis-

tratively removed from ISAP II while their eligibility for temporary protective status was determined. In both instances, compliance rates for the total population rise when this group is removed.



FINAL EOIR ORDER COMPLIANCE OR VERIFIED DEPARTURES (INCLUDES RELIEF GRANTED)

This chart reviews compliance with final EOIR orders or verified departures of ISAP II participants in the full-service supervision program. Of the 4,552 inactive ISAP II participant cases during CY2010, 47% of these participants were compliant or verified departures based on final EOIR decisions. Another 46% were still pending. Only 7% did not comply with final orders. Of the 4,552 inactive participants measured for final order compliance or verified departure, 1,620 were Pre-Order participants. Of these Pre-Order participants, 74% had complied with final court orders or were verified departures. These statistics include relief granted cases.



FINAL EOIR ORDER COMPLIANCE OR VERIFIED DEPARTURES (EXCLUDES RELIEF GRANTED)

This chart reviews final EOIR order compliance or verified departures for ISAP II, but the statistics exclude relief granted cases. In CY2010, the compliance rate for all inactive ISAP II participants was 39%. Another 53% of ISAP II participants in this category were still pending. Among the 1,132 Pre-Order participants, 63% had complied with final orders or were verified departures.

ISAP II COMPARED TO BENCHMARK

The chart below compares ISAP II full-service supervision to a pre-ISAP benchmark, a 2003 report by the Office of Inspector General (OIG)*. The OIG report was commissioned to determine whether the Immigration and

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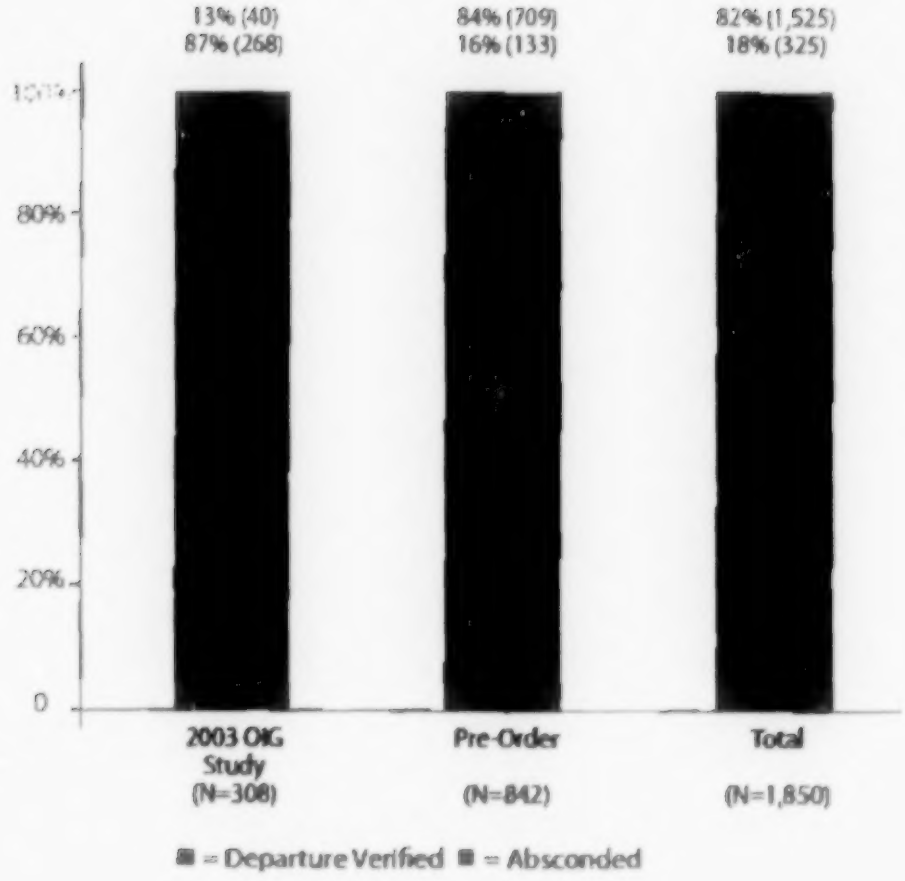
* *The Immigration and Naturalization Service's Removal of Aliens Issued Order, Report # 1-2003-004.*

Naturalization Service had improved its effectiveness at removing non-detained aliens with final orders. The report reviewed a random sample of the non-detained alien population from the EOIR database. It did not include cases in which relief was granted or individuals were allowed to stay in the U.S. We compare the OIG sample to ISAP II participants who were enrolled as Pre-Order and later received final orders. Specifically, we combine verified and voluntary departures that result from final orders (A and L terminations) and compare this data against Post-Order participant absconders (D terminations). The total ISAP II terminated population from CY2010 is also included for reference.

The Pre-Order ISAP II population in full-service supervision achieved an 84% verified departure rate as compared to 13% recorded in the OIG study. This data highlights one of the primary objectives of ISAP II full-service supervision—ensuring participants with final orders of removal depart successfully. Of the 842 Pre-Order participants, 133, or 16%, absconded.

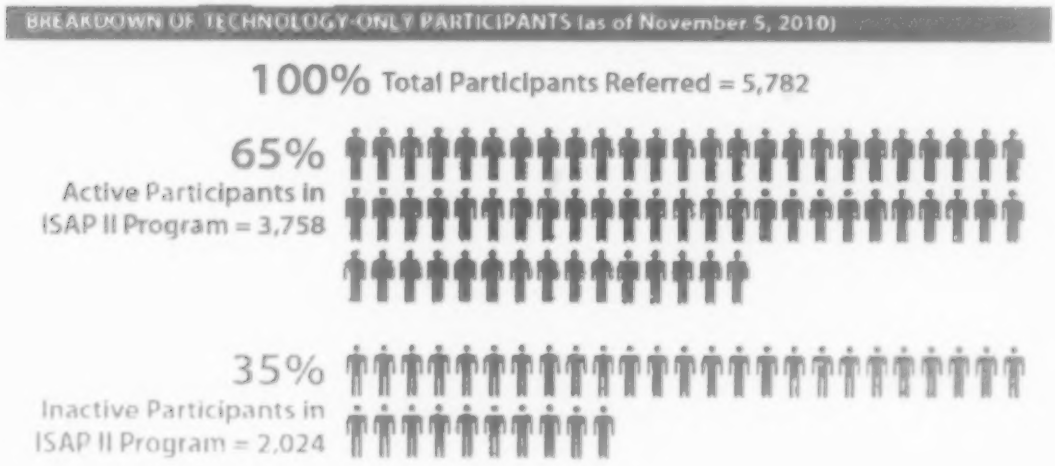


"EOIR court appearance rates have significantly improved, thereby reducing the number of aliens who failed to appear at their court hearings. Based on constant interaction between the ISAP II team and the participant, travel document issuance has improved, thereby reducing the length of stay in ICE detention, should detention be necessary in cases where the alien has not voluntarily departed."

- Assistant Field Office Director

ISAP II Year end Snapshot of Technology-Only Participants

Throughout CY2010, Enforcement and Removal Operations (ERO) referred 5,782 participants to the technology-only portion of ISAP II. At the close of CY2010, 3,758, or 65%, were still being supervised through the technology-only program. The remaining 2,024, or 35%, participants had been terminated by ERO throughout the year.



ACTIVE ISAP II TECHNOLOGY-ONLY PARTICIPANTS

Two supervision tools are available to Enforcement and Removal Operations (ERO) within the technology-only portion of ISAP II: BI ExacuTrack One GPS tracking and BI VoiceID telephonic reporting. ExacuTrack One and VoiceID are both used at the discretion of ERO officers as tools to enhance supervision efforts and assist in managing caseloads. ERO officers determine how to best employ these tools and when to terminate participant supervision. The breakdown of supervision technology used among active technology-only participants at the close of CY2010 is shown below.

90%
Participants on Telephonic Reporting = 3,371

10%
Participants on GPS Tracking = 387

INACTIVE ISAP II TECHNOLOGY-ONLY PARTICIPANTS

The following table highlights the reasons for termination among technology-only participants during CY2010. Thirteen termination types, as developed by Enforcement and Removal Operations (ERO), are used for both GPS and telephonic reporting participants. Of the 2,024 terminations by ERO during CY2010, 1,672 participants were monitored using telephonic reporting and 352 were monitored using GPS tracking.

FAVORABLE OUTCOMES

Type	Description	TR	Percent	GPS	Percent	Total	Percent
A	Departure Verified (Final Order of Removal)	34	2.0%	88	25.0%	122	6.0%
B	Relief/Benefit Granted (Cancellation of Removal, Adjustment of Status, Asylum, or Admission)	83	5.0%	17	4.8%	100	4.9%
G	No Longer Required to Participate (As determined by ERO for various reasons)	1,005	60.1%	105	29.8%	1,110	54.8%
H	Arrested by ICE for Removal (Final Order - Active Participant)	35	2.1%	30	8.5%	65	3.2%
I	Pending Departure Verification (Final Order of Removal or Voluntary Departure)	17	1.0%	14	4.0%	31	1.5%
J	Arrested by other Law Enforcement Agency	45	2.7%	16	4.5%	61	3.0%
K	Other (No longer required to report: medical or deceased)	52	3.1%	32	9.1%	84	4.2%
L	Departure Verified (Voluntary Departure)	4	0.2%	18	5.1%	22	1.1%
M	Departed the United States while in proceedings	0	0.0%	1	0.3%	1	0.0%
ISAP II TOTALS		1,275	76.3%	321	91.2%	1,596	78.9%

UNFAVORABLE OUTCOMES

Type	Description	TR	Percent	GPS	Percent	Total	Percent
C	Pre-Order Program Absconder (Terminated from ATD)	56	3.3%	3	0.9%	59	2.9%
D	Post-Order Program Absconder (Terminated from ATD)	94	5.6%	17	4.8%	111	5.5%
E	Pre-Order Program Violator	41	2.5%	4	1.1%	45	2.2%
F	Post-Order Program Violator	206	12.3%	7	2.0%	213	10.5%
ISAP II TOTALS		**397**	**23.7%**	**31**	**8.8%**	**428**	**21.1%**
Total ISAP II Technology-Only Case Terminations		**1,672**	**100%**	**352**	**100%**	**2,024**	**100%**

ISAP II LESSONS LEARNED

BI offers the following observations and lessons learned from the contract base year for ISAP II. We base these lessons on our experience operating this program as well as feedback collected from Enforcement and Removal Operations (ERO) personnel and ISAP II program managers.

1. ISAP II full-service supervision is an effective supervisory program for ERO, with 19,996 participants enrolled in the program this contract year. The program freed up valuable detention space and provided an additional supervision mechanism for individuals involved in the immigration court process.

2. The ISAP II full-service supervision methods, including direct case management and ongoing contact with program participants, achieve the desired goals of the program—attendance at court hearings and compliance with final Executive Office for Immigration Review (EOIR) hearing decisions.

3. BI managers and ERO officers report that in locations where participants pay bond fees, such as in Philadelphia and St. Paul, there is an additional incentive to comply with ISAP II full-service supervision guidelines.

4. We learned that having ISAP II full-service supervision participants report approximately two to four times monthly versus three times weekly (an ISAP I requirement), is an appropriate level of commitment and allows staff to better manage larger participant caseloads.

"BI has been an asset to our program and is a major factor in our overall success."

- Supervisory Detention & Deportation Officer

5. Effective communication is essential to ISAP II. This involves communication between all key ISAP II stakeholders including participants, BI staff, Non-Governmental Organizations (NGO), and ERO personnel. Both ERO and BI staff report a strong team effort in ISAP II, resulting in positive results and a willingness to adapt and evolve as program needs change.

6. We learned using GPS tracking of participants provides a higher level of supervision, particularly for individuals who may be a flight risk as a final court hearing approaches. In addition, BI managers report that participants on GPS tracking understand they are being monitored closely and behave accordingly.

7. We learned the "Fast Track" court program, a pilot program in which EOIR expedites ISAP II full-service supervision participant cases, shows promise in both court compliance and participants returning to their home nation more quickly.

8. Accelerated hearings provide significant cost savings to the government. Of the 15,794 hearings this contract year, 11,797 were continuances. Each participant had an average of five continued hearings prior to a final hearing taking place.

9. We learned ISAP II full-service supervision expands effectively without compromising program integrity.

Using proven policies and procedures learned in ISAP I, ISAP II full-service supervision expanded to 35 offices without interruption to participant supervision in the contract year.

10. We learned that by involving experienced BI staff members, who can either relocate to a new office or mentor new staff, new ISAP II full-service supervision offices can be added smoothly without interrupting current operations.

11. Consistent home visits, including home residence verifications, are essential to gain a snapshot of the participant's life and community ties. These visits also help build trust and rapport with participants, which help improve outcomes.

12. By providing a high level of supervision services, ISAP II full-service supervision allows deportation officers to focus on other tasks. As a result, ERO can dedicate more time to actual case management and communication with foreign consulates. This, in turn, has led to an increased rate of removal. In San Diego, ERO reported one officer was able to manage a larger caseload with ISAP II full-service supervision support.

13. We have heard from ERO that ISAP II participants are more inclined to surrender travel documents than aliens not involved in this program. In addition, ERO officers report that obtaining these travel documents increases "self-deports" and compliance with all court hearings and final court orders.

14. We have learned that community resources in each ISAP II full-service supervision office are an impor-

tant element of the program. By developing relationships with NGOs and maintaining a comprehensive list of NGO community resources for housing, legal support, medical, and more, participants are more stable in the community and more likely to comply with program and immigration court requirements.

SUCCESS STORY

Community Resources Contribute to Participant Safety

A participant reported marital issues to a BI case specialist in a full-service supervision office. The participant's situation escalated and she later reported her husband had become aggressive. She expressed a need to leave her home due to continued domestic violence. The case specialist advised the participant to seek assistance and provided referrals to local domestic violence shelters. The participant then moved to a temporary victim shelter, obtained a protection order against her husband, and sought counseling at the local shelter.

ISAP II RECOMMENDATIONS

These recommendations are based on our experience operating ISAP II as well as feedback provided by Enforcement and Removal Operations (ERO) personnel and ISAP II program managers. We believe the following recommendations would enhance ISAP II moving forward.

1. ERO and BI should continue to collaborate and develop pilot programs, such as the strategic alignment pilots and "Fast Track" court program, to refine ISAP II full-service supervision and enhance outcomes. If cases were processed in less than one year, results could be enhanced and overall costs reduced.

2. We recommend more flexibility in reporting requirements. Holding participants accountable for their behavior and compliance to program rules is essential; having the ability to add or remove sanctions based on participant compliance or noncompliance would enhance outcomes.

3. Because effective communication and continual improvement are so important in ISAP II, we recommend BI and ERO continue to meet frequently throughout the year. This includes monthly meetings at ERO headquarters and annual contract review meetings. Additionally, we recommend a partnership meeting be held annually to include ERO and ISAP II managers. Finally, regular meetings between ERO personnel and ISAP II program managers on the local level should continue as they promote consistent coordination of services in the field.

4. We recommend an ISAP II orientation and training be conducted with ERO field officers and headquarters personnel as they are assigned to the Alternatives to Detention (ATD) unit. This training would contribute to consistent understanding of ISAP II objectives, goals and program operation.

"ISAP II (full-service supervision) has also increased the level of compliance with court orders, i.e. voluntary departures and final orders of removal."

- Deputy Field Office Director

5. Because Non-Governmental Organizations (NGO) and community service providers have proven effective partners in stabilizing a participant's life, we recommend BI continue to meet frequently with NGOs —both nationally and in local communities—and maintain a comprehensive referral list of service providers.

6. Training should remain a priority for both ERO and BI. ERO needs to be informed of changes in supervision technology and program practices, and BI staff members need to continually advance their knowledge of immigration and court procedures.

7. We recommend home visits continue to be a prominent component of ISAP II full-service supervision. Though time-consuming, these visits provide rich detail into a participant's life and community ties, which support effective supervision and help determine flight risk.

8. ERO is currently creating a risk assessment tool and associated guidelines to be used in ISAP II. Upon

completion, we recommend a thorough training of all ISAP II full-service supervision, ERO and ATD personnel to maximize consistent and effective use of these tools.

9. We recommend additional benchmarks be developed to help refine analysis of the ISAP II full-service supervision and technology-only service components.

10. Additional data relative to the technology-only portion of ISAP II would enable analysis of its success in achieving key ISAP II objectives. Specifically, hearing appearance rates and final order status, as tracked for full-service participants, would assist in determining the effectiveness of the technology-only program track.

IT SECURITY: BI EARNS ACCREDITATION FROM ERO

As part of ISAP II contract requirements, BI was required to submit an information technology (IT) security plan and complete a Certification and Accreditation (C&A) process to meet government standards for unclassified information technology resources. BI provided extensive IT security and contingency plan documentation for the primary software applications used to operate the ISAP II contract.

The ERO and BI IT security teams worked in close coordination to complete the C&A process on schedule. In addition to the review of documentation, a Security Test & Evaluation Plan was administered by the DHS Information and Assurance Division to verify proper controls were in place by BI. On August 19, 2010, James Chaparro, Executive Associate Director for ERO, granted BI

an Authority to Operate (ATO) representing that the necessary security requirements had been met successfully.

The work toward achieving the ATO required strong collaboration between ERO and BI and was a tremendous team effort. The guidance provided to BI by the Information Resource Management Division of ERO was invaluable.

APPENDIX

ISAP II Full-Service Supervision Component Benchmark Comparison to the Vera Appearance Assistance Program (AAP) and the Office of Inspector General (OIG) Study

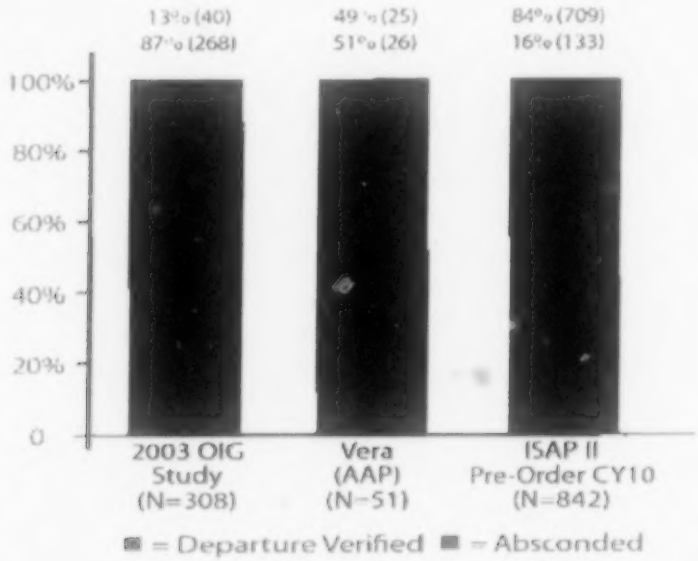
The Intensive Supervision Appearance Program (ISAP) was funded by Congress in 2004, after a 2003 OIG study[1] identified low compliance with final orders and appearance at immigration court hearings. The ISAP II full-service supervision model, developed by the Department of Homeland Security (DHS), incorporated lessons learned from the Vera pilot (2000)[2], called the Appearance Assistance Program (AAP), which operated from 1997-2000. This document compares the outcomes from the OIG study, Vera pilot and ISAP II full-service supervision program, and provides benchmark comparisons to track ISAP II full-service supervision success. The ISAP II outcomes are taken from the Contract Year 2010 Annual Report[3] and cover the base year of operations.

PROGRAM/STUDY COMPONENTS

	Vera Pilot Program Report (2000)	ISAP II Full-Service Supervision Component (2010)	OIG Study (2003)
Program Objectives	Increase appearance rates at court hearings and increase compliance with final orders of removal, including departure procedures and compare the results to other alternatives such as bond, parole and release on orders of recognizance (Vera, 2000)	Increase appearance rates at court hearings and increase compliance with final orders of removal, including departure proceedings (BI Incorporated, 2010)	"Determine whether the INS had improved its effectiveness at removing non detained aliens with final orders, and whether the INS actually implemented the actions ... agreed to ... in our 1996 report" (OIG, 2003, p. i.)
Location	New York City	35 full service supervision offices nationwide	Random Sample of the non detained docket from the LOIR database
Population/ Sample	Referred by INS: 534 Asylum seekers, criminal aliens, and undocumented workers 336 final orders at termination. 227 were low priority 109 were high priority	Referred by ERO ISAP II Pre-Order Participants: 1,620 New York ISAP II Pre-Order Participants: 72 All individuals referred by ERO were accepted and were not identified by criteria in Vera study (asylum seeker, criminal alien, undocumented worker)	308 Random sample and not identified by specific criteria in Vera study (asylum seeker, criminal alien, undocumented worker)
Levels of Supervision	Low priority and high priority. Low priority was defined as orientation and court reminders only. Vera outcomes are based on the high priority only.	Determined by legal stage: Pre Order, Post Order, Appeal, Post Order Custody Review Reasonable Foreseeable Removal, Post Order Custody Review Non Foreseeable Removal	N/A
Program components	High priority included: • Orientation • Face-to-face office visits • Telephonic reporting • Court reminders • Home visits • Community connections	Legal stage determines frequency of services: • Orientation • Face-to-face office visits • Random home visits • Electronic monitoring • Employment verification • Community connections • Service plans • Progress reports	N/A

The Appearance Assistance Program paved the way for expansion of Alternatives to Detention Programs by developing communication channels between providers and Immigration and Naturalization Service (INS). The Vera study also tracked participants moving through the complete immigration court system for the first time. The outcomes recorded from the Vera study enabled DHS to take what worked from the Vera study and expand it to eight original ISAP I sites across the country. As ISAP I showed success, the program was expanded to several additional sites. In 2009, the program was again expanded to what is today ISAP II, with 35 full-service supervision sites nationwide. As we continue to measure success based on three simple factors, appearance at court hearings, appearance at final court hearings, and compliance with final orders, DHS can educate decision makers on the continued success of this cost effective program.

Further discussion of the outcomes of alternative to detention programs, with detailed methodology, is included below.

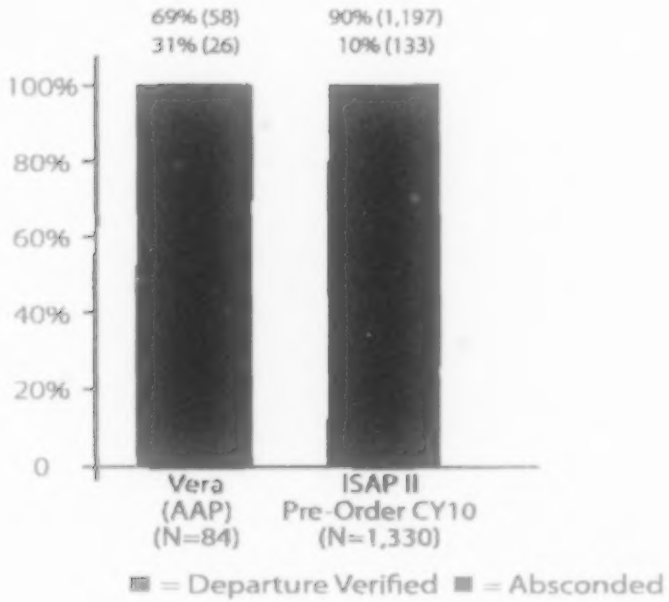


COMPLIANCE WITH FINAL ORDERS (OIG METHODOLOGY)

The OIG (2003) study offers a methodology from which benchmark comparisons can be made. The chart below compares all three outcomes (OIG, Vera, and ISAP II full-service supervision) using this methodology. The OIG study did not include cases where relief was granted or outcomes resulting in the individual being allowed to stay in the U.S.

To fairly compare Vera, ISAP II full-service supervision and OIG, the Vera numbers were adjusted as follows (ISAP II reports outcomes based on the OIG methodology, so no adjustments were needed):

- Of the 109 participants receiving final orders, 33 who were granted relief or allowed to stay in the U.S. were excluded.
- The Vera study included five departures AAP staff verified that INS did not confirm, but are included here.



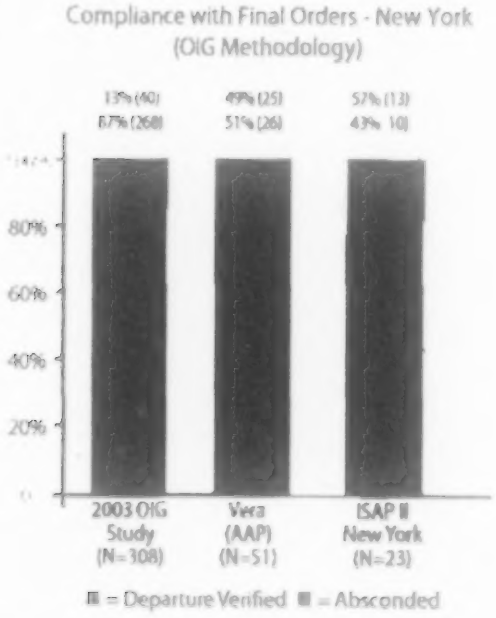
COMPLIANCE WITH FINAL ORDER (VERA METHODOLOGY)

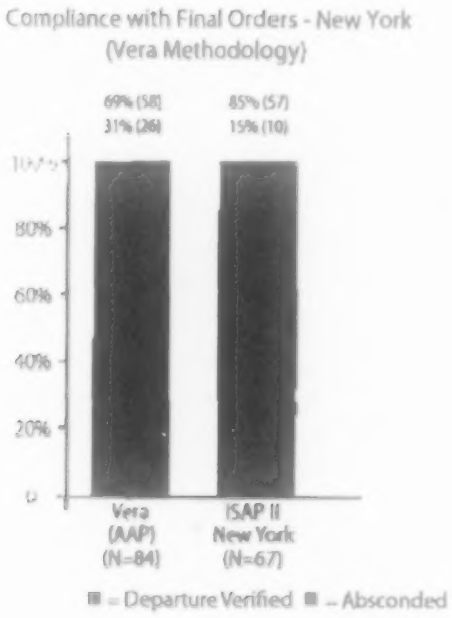
In order to compare ISAP II full-service supervision to the methodology used in the Vera study, the following adjustments to ISAP II numbers were made (note that OIG is not included as the Vera methodology could not be replicated with the available OIG data):

- Participants with relief granted were added back into the ISAP II full-service supervision numbers.
- Participants with relief granted, and those allowed to stay in the U.S., were included in the Vera numbers.

COMPLIANCE WITH FINAL ORDERS (NEW YORK COMPARISON)

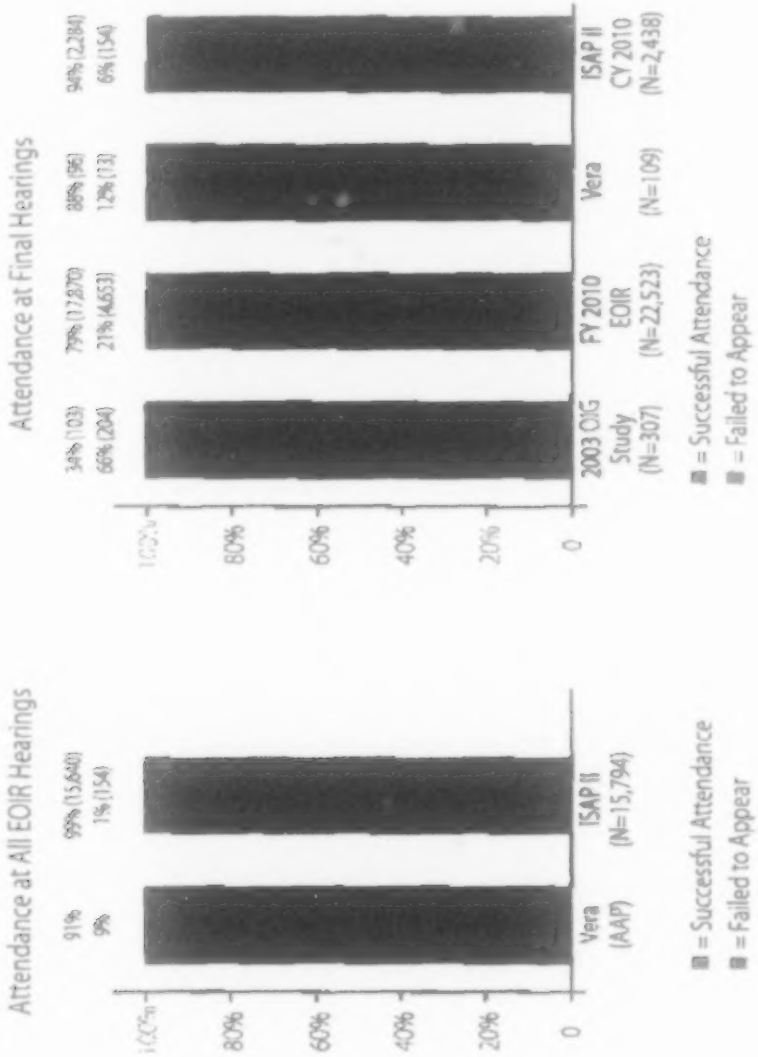
The two charts below follow the same methodology described earlier and compare Vera's population, which was located in New York, to the ISAP II full-service supervision Pre-Order population specific to only the New York office.





ATTENDANCE AT IMMIGRATION COURT HEARINGS

A second benchmark comparison is attendance at immigration court hearings. The chart below compares attendance at all hearings for Vera and ISAP II participants (OIG only reported attendance at hearings of final decision; therefore, a comparison for OIG could not be included). The second chart below compares ISAP II and Vera attendance at hearings of final decision against the OIG study and EOIR benchmarks.



SUMMARY

The outcomes from the Vera pilot and ISAP II full-service supervision are compelling and all programs should continue to be reviewed as the immigration system evolves in its ability and desire to measure program effectiveness throughout the immigration system.

- The outcomes reveal that both Vera and ISAP II full-service supervision had improved appearance rates and compliance when compared to the OIG study.
- When comparing Vera's AAP to ISAP II full-service supervision, ISAP II shows increased rates of compliance with final court decisions:
  - 90% compared to 69% with Vera methodology (All ISAP II full-service supervision)
  - 84% compared to 49% with OIG methodology (All ISAP II full-service supervision)
  - 85% compared to 69% with Vera methodology (New York ISAP II full-service supervision)
  - 57% compared to 49% with OIG methodology (New York ISAP II full-service supervision)
- When comparing Vera's AAP to ISAP II full-service supervision, ISAP II shows increased rates of appearance at immigration court hearings:
  - 99% compared to 91% for ALL hearings
  - 94% compared to 88% for hearings of final decision

- Both programs showed substantial improvement over unsupervised aliens, as indicated by the OIG numbers.
- Outcomes indicate Alternatives to Detention programs are an effective tool for increasing compliance with court attendance and compliance with final decision orders.

By increasing usage of alternative programs, ERO has the ability to measure success through programming that is effective, efficient and affordable.

---

[1] *U.S. Department of Justice, Office of Inspector General, Evaluation and Inspections Division (2003). Immigration and Naturalization Service's Removal of Aliens Issued Orders, Report #1-2003-004.*

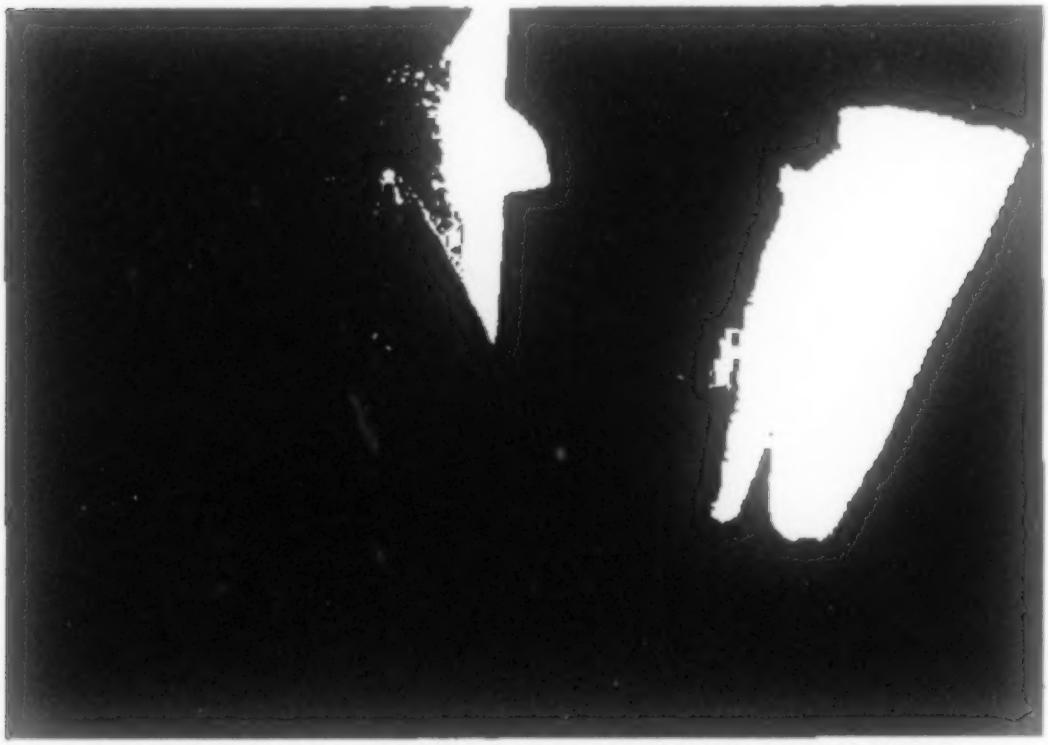
[2] *Vera Institute of Justice, Appearance Assistance Program (2000). Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program, Volume I. Final Report to the Immigration and Naturalization Service.*

[3] *BI Incorporated (2010). ISAP II Contract Year 2010 Annual Report.*

Exhibit E: ISAP II Annual Report
Contract Year 2011

INTENSIVE SUPERVISION APPEARANCE PROGRAM II

AN ALTERNATIVE TO DETENTION PROGRAM FOR THE U.S. DEPARTMENT OF HOMELAND SECURITY



CONTRACT YEAR 2011 ANNUAL REPORT

ISAP II 2011 ANNUAL REPORT

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"I have a great working relationship (with ISAP) that I consider a very valuable portion of my unit's
Supervisory Detention and Deportation Officer

MANAGEMENT LETTER

Nov. 6, 2011

BI Incorporated is pleased to prepare this annual report about the Intensive Supervision Appearance Program (ISAP), an alternative to detention program of the U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO). This report reviews program design and expectations, significant events, performance measures, lessons learned and recommendations for future operations. We are proud to report that ISAP continues to cost effectively support ERO to meet a critical need for community supervision of non-detained individuals when they are involved in the U.S. immigration legal system.

While policies adjust to meet the needs of evolving immigration issues, ISAP remains vital to ERO because it continues to focus on its core purpose since established in 2004: facilitate attendance at immigration court hearings and enhance compliance with final court rulings.

ISAP has always relied on a comprehensive case management process for participants—many unfamiliar with the U.S. immigration court system—to achieve positive outcomes. This case management system not only builds

trust with ISAP participants but also delivers quick and appropriate sanctions when necessary. The system tailors service plans for each participant, and it links immigration officials, community-based partners and participants effectively.

BI still utilizes this case management process, but today we have greatly expanded the use of location monitoring systems to assist in compliance and community supervision efforts. We have also strengthened our strategic partnerships with community-based organizations and non-governmental organizations to support participants as they proceed through Executive Office for Immigration Review hearings. Please see our staff profiles and comments from our strategic partners, both of which illustrate our commitment to a comprehensive approach.

The results are impressive. During the 2011 contract year, ISAP expanded to 40 locations (see map on page 21) and served participants from more countries than ever. In fact, during the 2011 contract year we helped ERO supervise a record-high 35,380 participants. Despite this rapid program growth, we remained vigilant to achieve high appearance rates for participants at all EOIR hearings and compliance with final court decisions. Success does not mean we have become complacent, though. Please reference the appendix for research we have completed with a respected researcher to better understand what influences positive results, including removals. We will work with ERO to use this valuable information to adapt and adjust, as needed.

I believe the success of ISAP hinges on several factors, including our partnership with ERO; a value orientation; staff teamwork, integrity and experience; and a flexible,

integrated approach. I would like to thank ERO for trusting BI to manage ISAP. We look forward to adapting and evolving with ERO as immigration policies and challenges unfold.

Sincerely,

/s/ BRUCE J. THACHER
BRUCE J. THACHER
President, BI Incorporated

PASS
Timetables

EXECUTIVE SUMMARY

Nov. 6, 2011

This annual report presents highlights and results of the Department of Homeland Security's (DHS) Intensive Supervision Appearance Program (ISAP)—from Nov. 6, 2010 through Nov. 5, 2011. Throughout this report, we refer to this period as Contract Year 2011 (CY 2011). The Alternatives to Detention (ATD) unit, a division of Immigration and Customs Enforcement's (ICE), Enforcement and Removal Operations (ERO), oversees ISAP.

ISAP is in its 7th year. BI Incorporated has managed ISAP since its inception in 2004. This program supports EOIR to enforce the nation's immigration laws in a fair and effective manner. ISAP employs a comprehensive case management system and location monitoring systems to facilitate attendance at all EOIR hearings and compliance with final court orders, including removal to a person's country of origin.

The ISAP design facilitates cost-effective services and promotes clear communication, rapid response and efficient operations. ISAP delivers two supervision options: a full-service option and a technology-only option. The full-service option involves intensive case management,

supervision, location monitoring technology and individual service plans. These service plans include legal, translation, and transportation services and plans for travel documents, departure and referrals to appropriate community services. Program managers and case specialists at the full-service offices also connect participants with local non-governmental and community-based organizations to facilitate stability in participants' lives.

ERO initially intended the ISAP technology-only option for locations where a full-service option was not available. However, it has evolved into a de-escalation tool for ERO. Participants involved in the ISAP technology-only option do not receive the full-service supervision provided from BI's 40 ISAP locations (see map on page 21). The technology-only option provides ERO personnel nationwide with two tools for location monitoring: GPS tracking and telephonic reporting. During CY 2011, ERO use of the technology-only option almost doubled, from 5,752 to 11,333 participants.

During CY 2011, the agency began to implement co-location sites, referred to as Government or "G" sites. G sites offer full-service opportunities in more locations. The first G site opened in March in Providence, RI, within 30 days of site approval. By yearend, five G sites were open, including locations in Tampa, FL, Bakersfield, CA, Marlton, NJ, and Charleston, SC. All sites reached recommended supervision counts quickly. As anticipated, the formation of the G site model allowed ERO and BI case specialists to communicate frequently for a coordinated approach to participant services, including simplified referrals, resolution of participant issues, and other program efficiencies.

In CY 2011, ISAP supported ERO to supervise 35,380 program participants, compared to 25,778 in CY 2010. Of the 35,380 participants supervised during CY 2011, 23,112 were still actively involved in ISAP at the end of the contract year. Throughout this report, we refer to these individuals as "active" participants. We refer to the remaining 12,268 participants as "inactive," meaning they exited the program. Inactive participants exited the program because EOIR granted relief or ordered removal from the United States; they had absconded and could not be located; or ERO had removed them from the program for reasons other than absconscion or completion and are still in process. An important component of the CY 2011 data analysis focuses on the inactive participant population to review compliance to final EOIR orders.

ISAP facilitated positive outcomes in CY 2011, including:

- A 37.2% increase in ISAP participants from the previous contract year
- Using an ERO-developed formula for removals, 84.0% of ISAP participants involved in the full-service supervision option and 46.7% in the technology-only option successfully departed the country (see page 15 for a full description)
- Using an OIG study benchmark for removals, 83.8% of ISAP participants involved in the full-service supervision option and 65.0% in the technology-only option complied with a final EOIR decision (see page 15 for a full description)
- Participants attended 99.4% of all EOIR hearings during the year

- Participants attended 96.0% of hearings when EOIR rendered a final decision
- The cost to administer ISAP has declined considerably due to refinements in the program model, operational efficiencies as the program expands, and advancements in technology

ISAP offers many benefits, including cost savings, high compliance outcomes, and conformity with due process and best practices internationally. On the following pages, please find a review of the program design, statistical data, lessons learned and recommendations for the future. Throughout this annual report, you will also find success stories, comments from ERO and NGOs we work closely with, and profiles of ISAP staff, many of whom have been with ISAP since ERO established the program.

Close observation leads to voluntary departure

By working closely with participants, ISAP case specialists are in tune with changes in their lives and their flight risk. For example, a participant, estranged from her husband, expressed problems with supporting her two children and meeting ISAP requirements. The case specialist connected the participant with community services, including food, rental assistance and counseling. When the participant continued with non-compliant behavior, ERO requested increased supervision with GPS tracking and more counseling on the EOIR process. Through this support, firm supervision and by arming the participant with a better understanding of the court system, ISAP was able to assist the individual to obtain voluntary departure to her home nation, with her two children, in time for a new school year there.

PROGRAM DESIGN

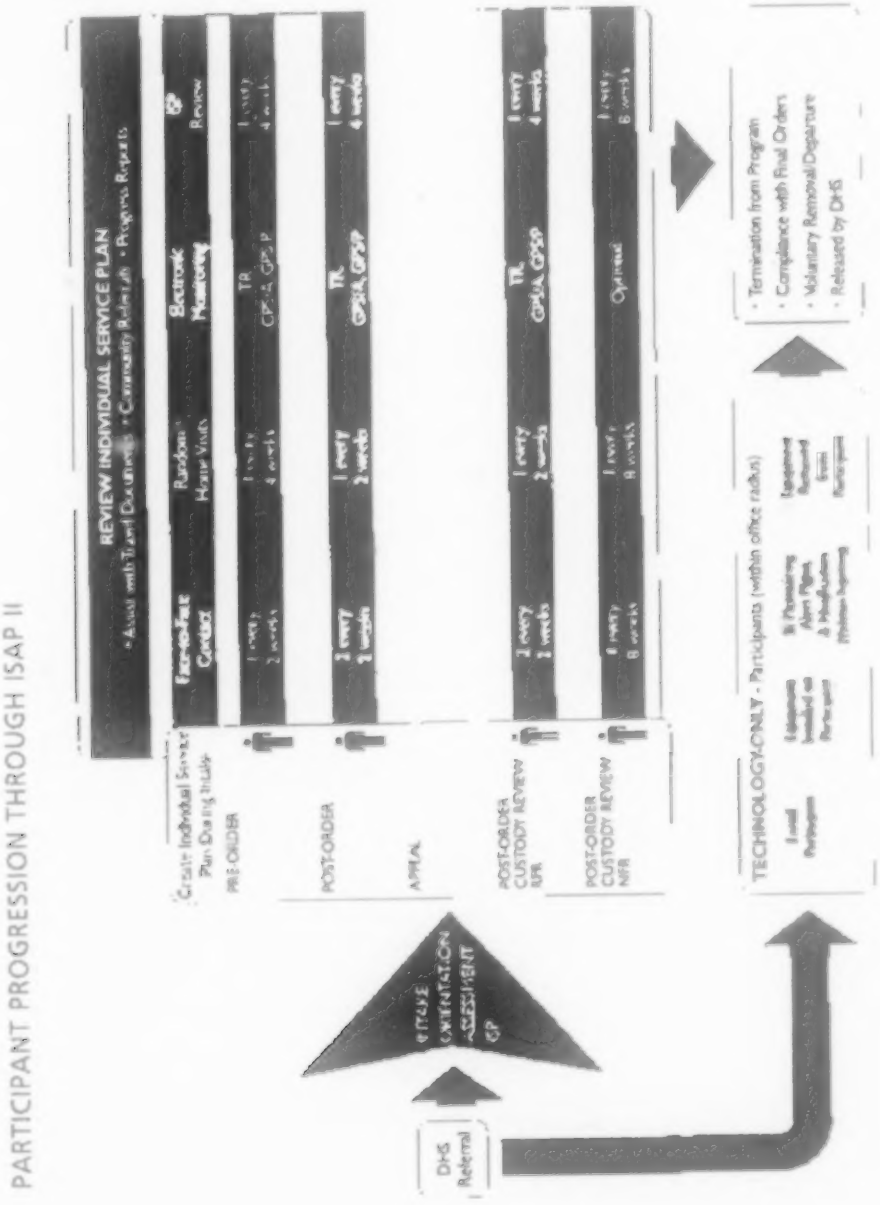
The Intensive Supervision Appearance Program (ISAP) is a highly structured program that supports Enforcement and Removal Operations (ERO) to monitor and manage individuals released to community supervision while they are involved with the U.S. immigration legal system. ISAP is an alternative to detention program that allows ERO to manage the non-detained population while also meeting international best practices for immigration.

ISAP manages participants based on their status within the immigration court system, including:

- **Pre-Order:** These program participants have not received an order of removal from the immigration court.
- **Post-Order:** These participants have received a final order of removal from the court. Voluntary departure decisions are also included.
- **Appeal:** These participants have received a decision from the Immigration Court and have filed a Notice of Appeal (NOA) with the Board of Immigration Appeals (BIA). The Appeal is pending.
- **Post-Order Custody Review-Reasonably Foreseeable Removal:** These individuals have received a court

order of removal, completed a custody review, and will be removed in the near future.

- **Post-Order Custody Review-Non-Foreseeable Removal:** These individuals have also received a court order of removal, completed a custody review, but it is estimated that they will not be removed in the near future.

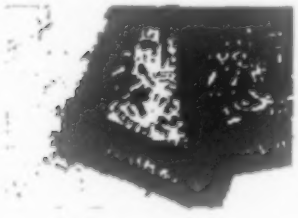


ISAP delivers two supervision options: full-service and technology-only. ERO refers individuals to one of these options based on assessed risk, circumstance, and full-service availability. The ISAP design facilitates cost-effective services and promotes clear communication, rapid response and efficient operations.

FULL-SERVICE SUPERVISION

The ISAP full-service option relies on a comprehensive case management process for participants—many unfamiliar with the U.S. immigration court system—to facilitate positive outcomes. This case management success builds trust with ISAP participants and their family members but also delivers quick and appropriate sanctions when necessary. The system tailors service plans for each participant, and it links immigration officials, community-based partners and participants effectively. It involves individual service plans, face-to-face visits at an ISAP office, home visits, and a focus on obtaining travel documents. During CY 2011, ISAP performed 353,964 office and 201,054 home visits with participants. Additionally, the staff secured 9,889 travel documents. By securing travel documents, ISAP staff prepares program participants for the possibility that EOIR may order removal from the country.

TRAVEL DOCUMENTS



Obtaining travel documents is an important component of the ISAP process and eventual removal, if ordered. In CY 2011, ISAP case specialists collected 9,889 travel documents from 140 nations.

As part of full-service supervision, the participant reports to a designated ISAP office within 24 hours of referral by ERO for intake, assessment and orientation. After an individual service plan is developed, the case management process begins. This involves a schedule of office visits, residence verifications, random home visits, and updates to the participant's schedule. Supervision of participants in the full-service option is supplemented with two forms of electronic monitoring—GPS tracking or telephonic reporting. GPS tracking is a more intensive location monitoring technology, but both of these options provide excellent details about the person's adherence to schedules and supervision plans (See Technology-Only Supervision on page 9 for more details).

A participant's stage of supervision reflects their stage in the immigration court process. The frequency of reporting to the ISAP office, home visits, employment checks and use of electronic monitoring corresponds to the specific stage of supervision. Additionally, the program is successful because of consistent case management services, including treating the participant with dignity and respect, building trust in the immigration process, providing community connections for unique participant needs, and holding the participant accountable.

The full-service option offers structure and flexibility to adjust, an approach that produces the desired results: high appearance rates at preliminary immigration court hearings and enhanced compliance with final court orders, including departure if ordered.

A focus on travel documents pays off

Obtaining travel documents from participants is a primary focus as they enter ISAP. By obtaining these ma-

terials, removals can be expedited if ordered. One participant, who had received a decision from EOIR, was enrolled in ISAP to support his removal to his nation of origin, India. The individual resisted providing his passport and visiting the Indian consulate, but the case specialist persisted. This persistence paid off when the individual surrendered his passport, visited the consulate in October, then was apprehended and removed (verified) in November.

Government (G) Site Locations: During Contract Year 2011, ERO and BI implemented a new model, called "G" site locations. G sites are an alternative to a stand-alone, full-service supervision office. G sites consist of an ISAP employee co-locating in an ERO office and performing the same services as at a full-service site. A G site employee conducts intake and orientations, office visits, home visits, assessments and individual service plans. ERO provides the necessary equipment, software, infrastructure and technical support services for these sites. During the contract year, BI opened five G sites. ISAP opened the first G site in Providence, RI. It opened in March 2011 within 30 days of site approval. This site grew quickly and provided the model for additional G sites in Tampa, FL, Bakersfield, CA, Marlton, NJ, and Charleston, SC. Each of these G sites met recommended supervision counts quickly. As anticipated, the formation of the G site model allowed ERO and BI case specialists to communicate frequently for a coordinated approach to participant services, including simplified referrals, resolution of participant issues, and other program efficiencies.

TECHNOLOGY-ONLY SUPERVISION

ERO created the ISAP technology-only option to offer an alternative where full-service supervision was not available. It has evolved to provide a tool for ERO to escalate and de-escalate participants between the full-service and technology-only options. Participants involved in the ISAP technology-only option do not receive the full-service supervision provided at the 40 ISAP locations. The technology-only option provides ERO personnel nationwide with two tools for location monitoring: GPS tracking and telephonic reporting. The GPS tracking system, BI ExacuTrack® One, is a sophisticated ankle-worn device that tracks a participant's movements and has many reliable tamper features that deliver alerts, if warranted. The telephonic reporting system, BI VoiceID®, helps ERO monitor compliance by making random and scheduled telephone calls to participants. VoiceID identifies participants through a biometric "voice print" and verifies the participant is where he or she is supposed to be throughout the day.

ISAP staff members can assist with participant enrollment, equipment installation and removal when there is an office in the area. ERO officers manage participant monitoring by logging on to BI's secure web portal and responding to violations as needed. ISAP program managers and BI's Monitoring Center Operations provide ERO officers with equipment training and 24-hour support.

ERO terminates participants in the full-service or technology-only ISAP supervision options when they comply with final court orders, voluntarily depart for their home country, or when they are released by ERO.

Monitoring technology supports departure verification

BI monitoring technology has many reliable tamper features that deliver alerts, if warranted. In one situation, ISAP staff received an alert from a GPS tracking device that the strap had been tampered with. In fact, by tracking the GPS data points, the device was located in a dumpster. Immediately, staff began reaching out to the participant's network of family and friends to locate the participant. ISAP staff, through a relative, was able to reach the individual in his home nation. ISAP staff then arranged a meeting between ERO and the participant. ERO was able to determine the individual had left the country, resulting in a verified departure versus an absconded case.

COMMUNITY CONNECTIONS

ISAP's success can, in part, be attributed to the support from our many community and non-governmental partners. These organizations provide invaluable services to ISAP participants and play a role in achieving positive outcomes. Though ISAP staff members are experienced, well educated and often well-versed in a variety of cultures, the program requires community assistance to achieve the greatest success.

ERO determines the supervision and services a participant will receive, but the ISAP case specialist is also able to make referrals to community-based organizations based upon an intake assessment. These assessments can identify a participant's basic life needs, which often need to be met before the participant can think about attending court hearings and complying with orders of supervision. Identifying these needs and referring participants to supportive agencies is an integral part of ISAP, and it would not be successful without the support of the many agencies who serve ISAP participants.

Each ISAP site has a community resource plan outlining the agencies able to serve participants. This includes agencies able to provide services for food, shelter, legal assistance, mental health, medical, transportation, and other basic life needs.

ISAP program managers reach out to community organizations to help them understand the program and how they might help. The responses have been phenomenal, and in the last year, participants have received an extensive list of meaningful services. A partial list of partner providers includes:

24 Hour Crisis Stabilization
Affordable Housing
Alcohol Drug Action
Alcoholics Anonymous
American Friends Service Committee
American Red Cross
Amtrak Rail Service
Angel Food Ministry
Baptist Immigration Center
CASA (Colombian American Service Assoc.)
Catholic Charities
Centers for Victims of Torture
Charlotte Housing Authority
Child & Family Reach Out Program
Child Protective Services
Coalition for Suicide Prevention
Dental Health Services
Denver Rescue Mission
Department of Homeless Services
Department of Public Health
Diocesan Migrant & Refugee Services, Inc.
ESL Language Centers
Family Health Services
Florida Immigrant Advocacy Center (FIAC)
Food Bank of San Diego
Food Pantry Community Missions
God's Food Pantry

Good Neighbors Health Care
Goodwill Industries
Greyhound Bus Lines
Healthcare for the Homeless, Inc.
Hispanic Migrant Ministry
Hope Clinic
Housing Authority
Housing Helpers
Housing & Urban Development
Immigration Counseling Services
Interfaith Ministries
Latin America Association
Legal Aid of Western Missouri
Medicare Advocacy Program
Morris County Dept. of Human Services
New Options for Violent Actions (NOVA)
Planned Parenthood
Public Health Department
Regional Transit Authority
Rocky Mountain Survivors Center
Salt Like City Office of Diversity Affairs
Salvation Army
San Diego Coalition for the Homeless
San Diego Rescue Mission
Spanish Catholic Canter Medical Clinic
Substance Abuse & Mental Health (SAMHSA)
The Neighborhood Center
Traveler's Aide (Hope Atlanta)
Turning Point
United Way
VIA Public Transport
Volunteers of America
Women, Infants & Children (WIC) Program

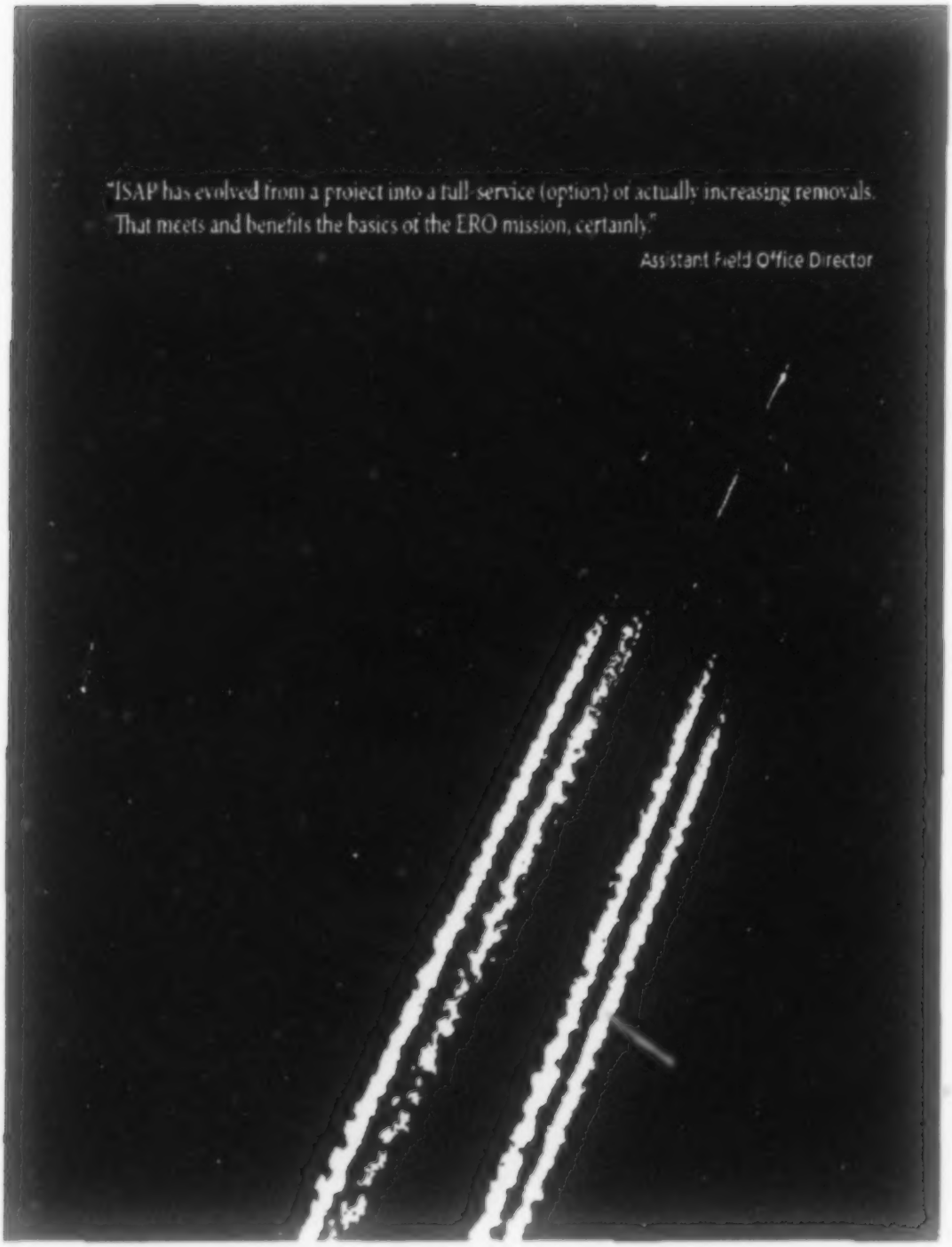
World Relief
YMCA
YWCA

"I have worked with the ISAP Kansas City office from the first day of the program. They are courteous, professional and easy to work with. They realize the importance of having legal assistance and consultation in these cases."

Suzanne Gladney, Managing Attorney
Legal Aid of Western Missouri
Kansas City, Missouri

ASSISTANCE WITH STABLE HOUSING

ERO and the program manager met with a habitual violator to assess how to ensure program compliance and determined that she needed a housing referral. The participant had an unstable living situation and had been associating with drug users. The program manager called Healthcare for the Homeless who prepared a stable residence for her until she files a change of venue and moves in with her mother in Texas.


"ISAP has evolved from a project into a full-service (option) of actually increasing removals. That meets and benefits the basics of the ERO mission, certainly."
Assistant Field Office Director

FINDINGS

The Intensive Supervision Appearance Program (ISAP) contract year was from Nov. 6, 2010 to Nov. 5, 2011. BI managed 40 locations for Enforcement and Removal Operations (ERO) during this contract year. The findings section reviews general statistics for the contract year, post-order removal data, and specific Executive Office for Immigration Review (EOIR) hearing data.

ISAP remains vigilant in facilitating participant attendance at all EOIR hearings, including hearings where final orders are rendered. By facilitating high attendance rates, ISAP builds trust in the court system and achieves favorable outcomes.

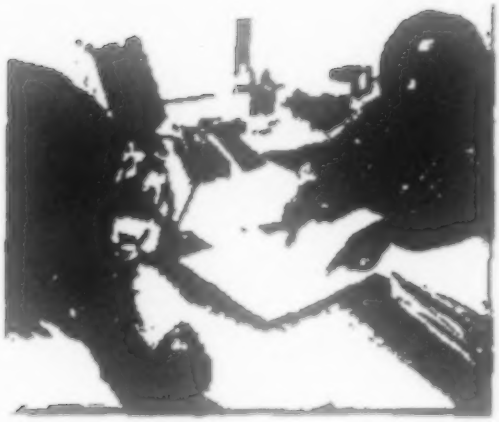
As part of the data review for Contract Year 2011 (CY 2011), ISAP outcomes are compared against benchmark data and results achieved in Contract Year 2010.

General Program Data

In Contract Year 2011, ISAP supervised 35,380 participants, a 37.2% increase from the previous year.

STATISTICS FROM 11/6/2010 - 11/5/2011

	FULL-SERVICE (FS)	TECHNOLOGY-ONLY (TO)	TOTAL
TOTAL SERVED	24,047	11,333	35,380
Active in Program as of 11/5/11	13,862	9,250	23,112
Terminated from Program between 11/6/10 and 11/5/11	10,185	2,083	12,268



Participant Termination Data

ERO defines 13 possible termination outcomes for ISAP participants. The following table displays results by termination type for these participants.

TERMINATION CODES

TYPE	DESCRIPTION	FS	TO
FAVORABLE OUTCOMES			
A	Departure Verified (Final Order of Removal)	1,126	203
B	Relief/Benefit Granted (Cancellation of Removal, Adjustment of Status, Asylum, or Admission)	603	168
L	Departure Verified (Voluntary Departure)	963	61
M	Departed the United States while in proceedings	121	5
NEUTRAL OUTCOMES			
G	No Longer Required to Participate (As determined by ERO for various reasons)	5,429	1,033
H	Arrested by ICE for Removal (Final Order - Active Participant)	99	63
I	Pending Departure Verification (Final Order of Removal or Voluntary Departure)	147	31
J	Arrested by other Law Enforcement Agency	640	89
K	Other (No longer required to report: medical or deceased)	133	27
UNFAVORABLE OUTCOMES			
C	Pre-Order Program Absconder (Terminated from ATD)	395	40
D	Post-Order Program Absconder (Terminated from ATD)	405	142
E	Pre-Order Program Violator	107	56
F	Post-Order Program Violator	17	165
TOTAL		10,185	2,083

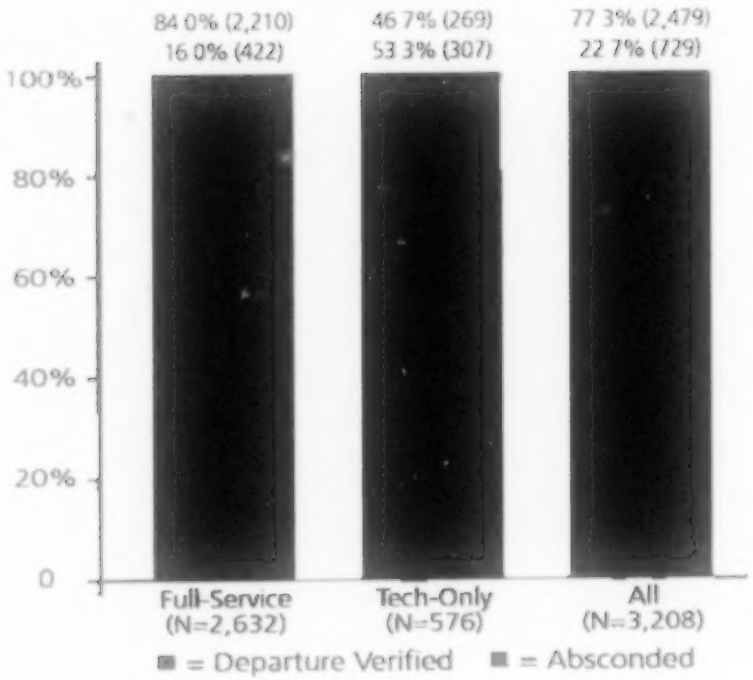
Legend Note: These results reflect the ISAP participant year and 6 months from the Government Fiscal Year. In addition, the results do not include changes that may have occurred after a participant was terminated from ISAP. The Government's database will have these updates

Removal Outcomes

ISAP has been successful in facilitating removal. Two sets of removal calculations—one based on an ERO formula and another based on removal calculations from previous ISAP years (to allow comparison against a 2003 Office of Inspector General benchmark study), produce consistent results.

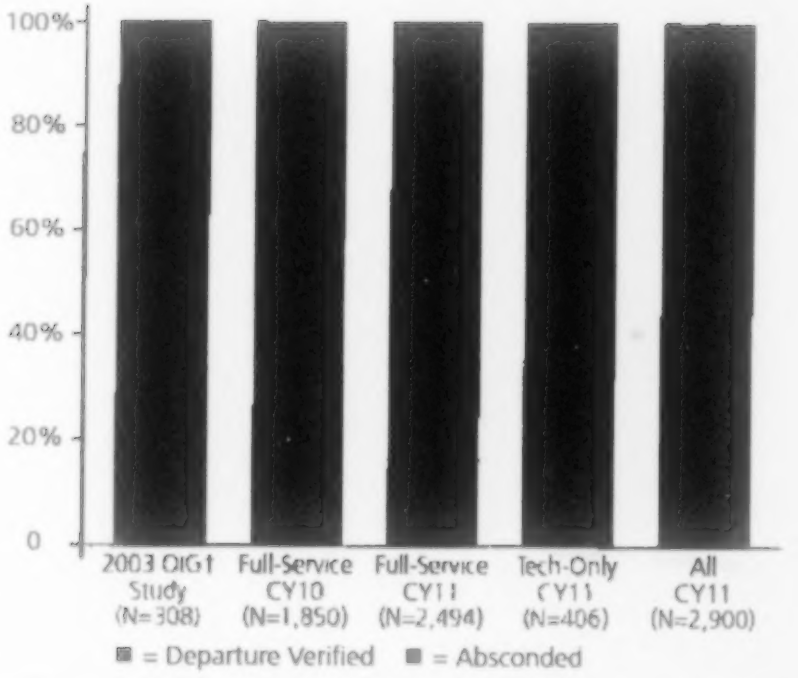
ERO Formula

Based on an analysis of 2,632 participants in the full-service supervision option who received a final order to depart the country/departure verified (Type A); departed voluntarily (Type L); departed while in proceedings (Type M); absconded (Type D); or program violator (Type F), ISAP achieved an 84.0% rate of compliance. Based on an analysis of 576 participants in the technology-only supervision option who received a final order to depart the country/departure verified (Type A); departed voluntarily (Type L); departed while in proceedings (Type M); absconded (Type D) or program violator (Type F), ISAP achieved a 46.7% rate of compliance. When combining participant termination counts for individuals in both the technology-only option and full-service option (3,208 individuals, types A, L, M, D, F), ISAP achieves a 77.3% compliance rate.



OIG Study Benchmark

The OIG study benchmark allows for a comparison against pre-ISAP benchmark data. Of 2,494 participants in the full-service supervision option who received a final order to depart the country/departure verified (Type A); departed voluntarily (Type L); or absconded (Type D), ISAP achieved an 83.8% rate of compliance. Based on an analysis of 406 participants in the technology-only supervision option who received a final order to depart the country/departure verified (Type A); departed voluntarily (Type L); or absconded (Type D), ISAP achieved a 65.0% rate of compliance. When combining participant termination counts for individuals in both the technology-only option and full-service option (2,900 individuals, types A, L, D), ISAP achieves an 81.1% compliance rate, far exceeding an OIG study that found that individuals complied with only 13.0% of final EOIR court orders in 2003.



† Immigration and Naturalization Service's Removal of Aliens Issued Orders, Report #1-2003-004

Findings Note: These results cover the ISAP II contract year and will differ from the Government Fiscal Year. In addition, the results do not include changes that may have occurred after a participant was terminated from ISAP. The Government's database will have these updates.

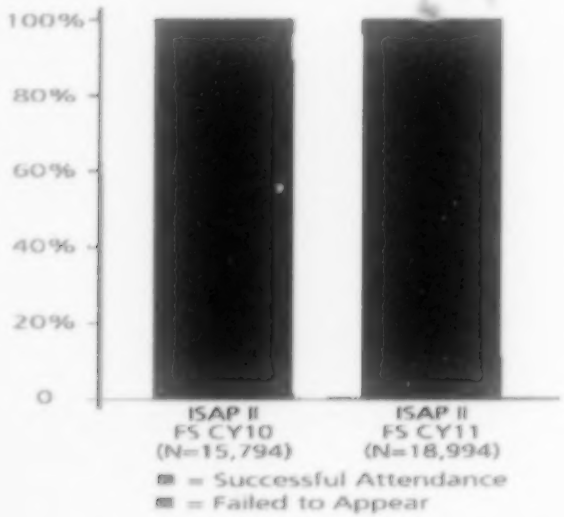
HEARING ATTTENDANCE—FULL SERVICE PARTICIPANTS

Full-Service
EOIR Hearing Data—All Hearings

Since its inception, ISAP has focused on delivering firm, fair and consistent services for participants. This approach aligns with ERO's mission to deliver a flight-mitigation program that increases compliance with release conditions, facilitates participant compliance with court hearings and final orders of removal while allowing individuals to remain in the community.

As a result, ISAP focuses on facilitating attendance at all EOIR court hearings, including hearings where final decisions are rendered. ERO does not track hearing attendance for technology-only participants and this section covers ISAP full-service attendance only.

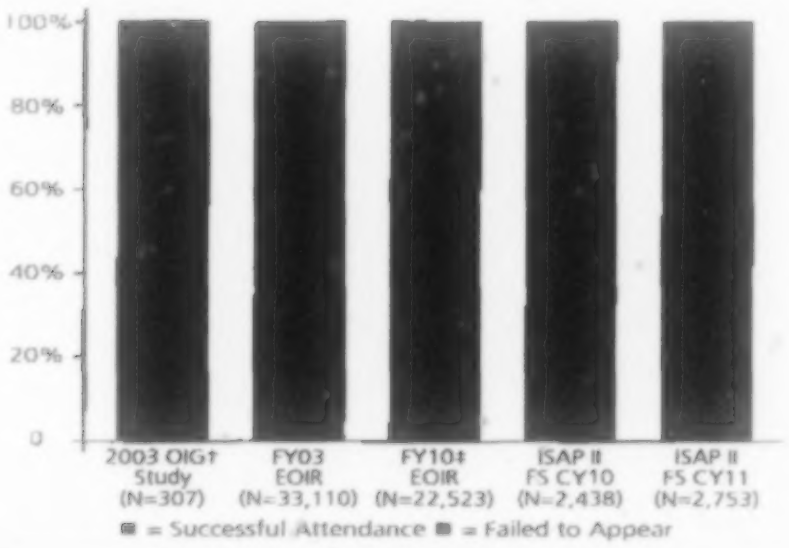
Consistent with previous contract years, in CY 2011 ISAP achieved an excellent 99.4% full-service participant attendance rate at all EOIR hearings. Of 18,994 hearings for participants during the year, participants attended all but 109.



Full-Service
EOIR Hearing Data —Final Hearings

At hearings where final decisions were rendered, ISAP also achieved an excellent 96.0% compliance rate for full-service participants. Of 2,753 final order hearings during the year, participants attended all but 109 as well. These rates far exceed compliance rates before ISAP was implemented. For example, the 2003 OIG study, which included a population similar to participants involved in ISAP, found only 33.6% of individuals attended final hearings. Another report from 2003, the EOIR Statistical Year Book, which included a broader group of participants than the OIG study, found 59.4% of individuals attended final court hearings.

In 2010, there were 22,523 EOIR hearings. Of these hearings, individuals attended 17,870, a compliance rate of 79.3%.



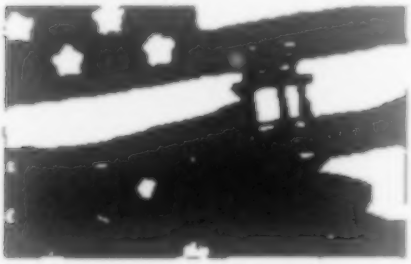
† Immigration and Naturalization Service's Removal of Aliens Issued Orders, Report #I-2003-004

‡ Executive Office for Immigration Review, FY 2010 Statistical Year Book. Note change in methodology - administrative closures are no longer included to calculate failure to appear rate. As of 2009 EOIR only uses IJ decisions and orders in absentia

Findings Note: These results cover the ISAP II contract year and will differ from the Government Fiscal Year. In addition, the results do not include changes that may have occurred after a participant was terminated from ISAP. The Government's database will have these updates.

* Hearing attendance data not available for Technology-Only.

ISAP II AND ERO PARTNER TO IMPROVE HEARING ATTENDANCE



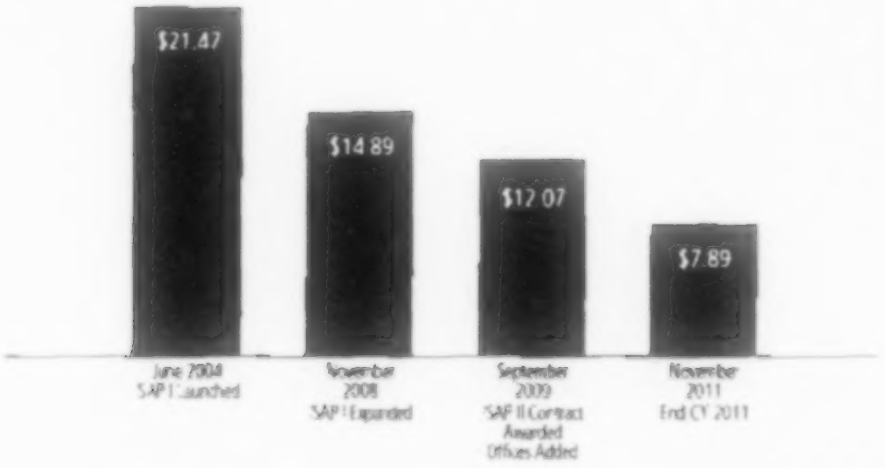
An ISAP task force was implemented to address offices below a 94% hearing attendance rate. The group identified the unique challenges faced in each location. They shared ideas on what had worked in other locations and ways to overcome barriers participants face in attending their court hearings. Specifically, the San Bernardino office, in partnership with local ERO, was the lead office in re-developing the supervision protocol to achieve maximum EOIR attendance. An analysis was conducted on historical absentia orders, and the results identified the most common barriers to hearing attendance as: unreliable transportation and/or directions, last-minute emergencies, forgotten appointments, and fear of attending.

To counter these barriers, ISAP II staff increased their efforts to prepare participants for hearing attendance by demystifying the EOIR process, confirming hearing

dates/times and reminding participants at each face to face visit, confirming three transportation plans in advance of the hearing, conducting one week and 24-hour court reminder calls and/or unannounced home visits, and tracking the participant's GPS points the day of scheduled hearings.

The implementation of these initiatives has produced quantifiable improvement in hearing attendance rates across the country.

ISAP FULL-SERVICE COSTS DROP OVER TIME



As the number of participants in the full-service option has increased since ISAP was implemented in 2004, the cost to administer the program has dropped significantly. In 2004, the daily participant rate was $21.47. At the end of CY 2011, the daily cost per participant had dropped to $7.89 per day.

Visas
Departure
2006-03-
EXIT
IMMIGRATION

LESSONS LEARNED

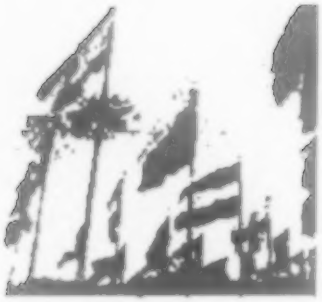
BI offers the following observations and lessons learned for the Intensive Supervision Appearance Program (ISAP) Contract Year 2011. We base these on experience operating this program for Enforcement and Removal Operations (ERO) and feedback from ISAP program managers, ERO and non-governmental and community-based organizations.

- ISAP facilitates **excellent attendance rates** at Executive Office for Immigration Review (EOIR) hearings and compliance with removals, if ordered by the court.
- ISAP continues to be a **flexible option** for managing the non-detained population. A survey of ERO staff that work with ISAP unanimously stated the program is a valuable ERO program.
- ISAP has become a **trusted alternative** to detention for ERO, allowing ERO officers to manage large caseloads and specific cases that require immediate attention.
- Once ERO refers individuals to ISAP, focusing on **obtaining travel documents** as soon as possible helps facilitate timely compliance with removal orders.

- The ISAP full-service option generates higher final **order compliance** than the technology-only option.
- We learned that adding **Government "G" site locations**, where BI co-locates ISAP staff in ERO offices, can be done within 30 days of site approval. During the year, BI implemented five G sites. Feedback on these sites indicates these sites facilitate good communication, efficient operations, and effective participant services.
- **Ongoing communication** between ERO and ISAP facilitates coordinated and cost-effective outcomes. For example, ISAP offices provide a daily participant violation report to the local ERO office to respond quickly to non-compliant behavior.
- We have learned that **increasing the level of supervision and communication** with participants prior to final court hearings facilitates appearances at these important hearings. For example, a pre-final court hearing reminder has been an effective enhancement.
- **Home visits**, as performed in the ISAP full-service option, provide excellent details about a participant's life and a window into this individual's flight risk.
- Placing ISAP offices within **close proximity to ERO offices** facilitates easy enrollment and frequent communication.
- Educating EOIR judges on ISAP facilitates more **timely outcomes and saves money.** In locations where EOIR installs new judges, a drop in efficiency has been noted.

- Working with **local NGOs and community-based organizations** is an important and ongoing responsibility for ISAP sites. Establishing and maintaining open channels of communication with these organizations facilitates referrals for necessary participant services. By connecting participants with vital community services, such as shelter, food or health services, they stabilize in the community and better engage in the EOIR process.
- We have learned that **contract modifications** can be effective at adapting and evolving to immigration challenges. These modifications, such as adding phase flexibility and allowing the cellular option for individuals on telephonic reporting, keep the program relevant.
- Treating participants with **dignity and respect** enhances compliance to program guidelines and outcomes.

RECOMMENDATIONS



We believe the following recommendations would enhance the Intensive Supervision Appearance Program (ISAP). These are based on operational experience and feedback from staff, Enforcement and Removal Operations, and non-governmental organizations (NGOs).

- We recommend that **more Government, known as "G" sites, be added.** These sites are an alternative to stand-alone, full-service supervision locations, they can be implemented in just 30 days, and they allow more participants to be served in more geographic locations. By being collocated in an ERO office, G sites also facilitate effective communication between ISAP and ERO.

- We recommend **ERO attend future technology training forums,** such as the session hosted at the BI National Monitoring Operations center this year. Location monitoring technology is continuously updated; understanding these changes can be helpful as BI incorporates these enhanced systems into program operations.

- We recommend that **training programs for ISAP staff** continue to include information on the removals process and ongoing refreshers on immigration law. By continuing to understand and align with ERO's mis-

sion, ISAP staff can effectively support this partnership.

- We recommend ERO develop a **training program for new EOIR judges** that promotes moving ISAP cases through the docket efficiently, thereby saving money and enhancing outcomes.
- We recommend that ISAP staff conduct **open houses on a regular basis** for local NGOs and community-based organizations. By facilitating open communication and an understanding of each other's mission, ISAP can better connect participants with services.
- We recommend **additional benchmarks** be developed to refine analysis of the ISAP full-service and technology-only supervision options.

ABOUT BI INCORPORATED

Established in 1978, BI Incorporated works with approximately 900 U.S. governmental agencies. In addition to managing ISAP since 2004, BI provides a full continuum of location monitoring systems, monitoring services, and treatment and day reporting services for offenders in residential, non-residential or in-custody settings. BI works closely with community corrections and immigration officials to cost effectively reduce recidivism and promote public safety. BI is a wholly owned subsidiary of The GEO Group, a global leader in corrections.

BI INCORPORATED ISAP II FULL-SERVICE (FS) & GOVERNMENT (G) SITES

ISAP II Full-Service Supervision Offices:

Atlanta	Newark
Baltimore	New Orleans
Boston	New York City (4)
Buffalo	Orlando
Charlotte	Philadelphia
Chicago	Phoenix
Dallas	Portland
Delray Beach	Salt Lake City
Denver	San Antonio
Detroit	San Bernardino
El Paso	San Diego
Hartford	San Francisco
Houston	Santa Ana
Kansas City	St. Paul
Los Angeles	Seattle
Miami	Washington, D.C.

ISAP II Government Sites:

Bakersfield	Providence
Charleston	Tampa
Manton	

BI INCORPORATED ISAP II TECHNOLOGY ONLY (TO) SITES

ISAP STAFF SPOTLIGHT

[REDACTED]

"I enjoy helping participants understand and navigate the immigration system. Based on my family's positive experience—complying with rules, filling out the forms, and seeing the system work—I aim to have participants comply too. If I did it, they can too."

Jocelyne wanted to work in immigration since her family moved to Boston from the Democratic Republic of Congo a decade ago. While she was in high school, her family was selected in the U.S. Diversity Immigrant Visa Program lottery. She continued her education in Boston, earning a criminal justice degree from University of Massachusetts. She has counseled and administered case management services for juvenile delinquents, which prepared her for her ISAP role. Jocelyne speaks French, Spanish, English and Lingala.

[REDACTED]

"I aim to be helpful and treat participants with dignity and respect. We help in many ways, and the relationships we build help avoid problems, gain trust and get results. Recently an individual, though terminated from ISAP, wrote a letter saying he appreciated our treatment."

Vincenia joined ISAP in Charlotte as a case specialist and was soon promoted to program manager. Vincenia has worked with federal, state, criminal justice and child welfare services, including time as a probation officer and civilian personnel clerk for the Navy. She also tutored in the America Reads program for young students and linked juvenile clients with the U.S. Marine's mentoring program for at-risk children. She has a master's degree in Urban Studies and bachelor's in Criminal Justice from Old Dominion University.

[REDACTED]

"ISAP saves the government a lot of money. Many participants are ideal candidates for an alternative to deten-

tion. They can live in the community and support their families while we help them through the immigration process."

Diana is involved in daily office activities, like installing or answering questions about GPS tracking, giving directions to services, coordinating information between case specialists and participants, even making court reminder calls. Participants in Chicago are often of Eastern European and Hispanic descent, so she applies her five languages—Ukrainian, Polish, Spanish, Russian and English. A Ukraine native, Diana cares about helping others, and believes in alternatives to detention. She has a political science degree and has taken national security classes at DePaul University.

[REDACTED]

"I use my educational training in ISAP, including counseling, working with referral organizations, and using the local network to stabilize participants in the community. I believe in treating people with dignity and respect, but I am also here to help them follow through and hold them accountable."

Kiana tells her two young daughters to reach high, and she, too, sets high goals in her commitment to her community and work. During Hurricane Katrina, her family was displaced to Houston. There, she joined the Texas

Department of Criminal Justice as a parole officer. Ten months later, she returned home and earned her master's in Social Work from Southern University, having previously earned her criminal justice degree. She completed internships at the U.S. Probation Office and the New Orleans Criminal Court Mental Health Program, prior to joining the ISAP team.

[REDACTED]

"I keep learning about the challenging but interesting immigration process, and I like working with the participant population. We build rapport with them, help them understand the system, keep them from absconding and compliant with court orders. We make a positive impact."

Raised in the border town of San Luis, Arizona, Alan uses his knowledge of the area and the participant population, helping participants connect with the Mexican consulate and obtain departure papers as needed. Bilingual in English and Spanish, Alan earned his sociology degree from Arizona State University. He was previously a security officer.

[REDACTED]

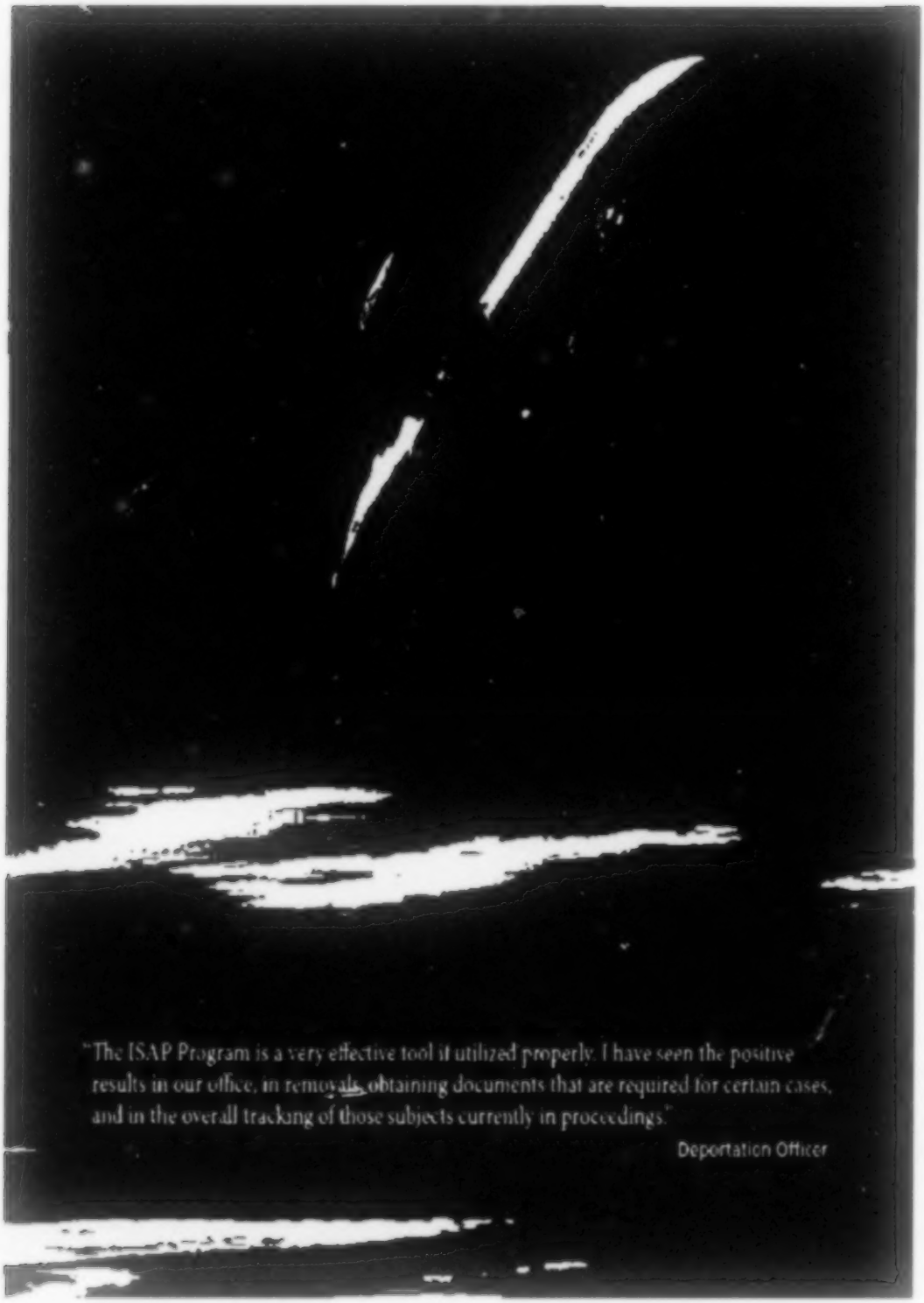
"I like what I do because the work is always evolving and the challenges are different. Each participant has a unique background, different cultural influences or circumstance, requiring a new approach. In working with them, I keep this in mind."

Eduardo joined the ISAP team seven years ago. He has worked in several offices, including Miami, San Bernardino, and Charlotte, and has helped ISAP expand. He also assisted Phoenix, Santa Ana, Baltimore and others. Born in Peru, he emigrated to Florida in 1995. He uses his multilingual abilities (he speaks English, Spanish, Portuguese and basic French) to connect with the diverse ISAP population. Eduardo earned a bachelor's degree in Psychology and master's in Social Work from Florida International University.

Staff reaches overseas to complete the job

Sometimes, ISAP staff go beyond our borders to complete the job. For example, a participant from the Philippines complied with his voluntary departure and returned to his home nation in June. The ISAP case specialist noticed a discrepancy in his itinerary and, as a result, his departure could not be verified using ERO software. By requesting the individual provide his email address prior to removal, the case specialist was able to

follow up with the participant, learn that he had become sick upon return home, and request he submit verification to the American embassy as soon as possible. ERO informed ISAP his departure was verified the next day.


"The ISAP Program is a very effective tool if utilized properly. I have seen the positive results in our office, in removals, obtaining documents that are required for certain cases, and in the overall tracking of those subjects currently in proceedings."
Deportation Officer

While educated assumptions about why ISAP has been successful are relevant, they have not yet been validated. The purpose of this study was to understand factors that have affected these outcomes.

APPENDIX: SUPPLEMENTAL REPORT

There is a lack of research exploring the effective management of the non-detained, undocumented immigration population in the United States. BI Incorporated, with the expertise and oversight of Dr. Jeffrey Lin, assistant professor of sociology and criminology at the University of Denver, has completed a statistical study of the Intensive Supervision Appearance Program (ISAP). While educated assumptions about why ISAP has been successful are relevant, they have not yet been validated. The purpose of this study was to understand factors that have affected these outcomes. In this study, we examined (1) factors that predict removal and (2) flight risk (i.e. risk of absconding), using ISAP participants from the full-service component of the program, or those individuals receiving intensive case management services as they navigate the immigration court process. The study did not include ISAP participants from the technology-only component.

This study used data collected on ISAP participants who were terminated between November 8, 2009 and No-

vember 5, 2011, and were not terminated as Term Code G. The study identifies factors that predict (1) compliance with removal orders and (2) flight risk. Participants in this study were referred to ISAP by Enforcement and Removal Operations (ERO) officers. ERO is a division of Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS).

Multivariate statistical analyses were conducted on this data to identify factors that predicted compliance with removal orders and flight risk while in ISAP. The participants in this study were members of the larger non-detained, undocumented immigrant population in the United States managed by ERO. The non-detained population consists of approximately 1.6 million undocumented immigrants (Enforce Alien Removal Module, ICE's system of record, December 30, 2011). Participants were adults, and upon entering ISAP, received an intake, orientation, and assessment, followed by the development of his or her Individual Service Plan (ISP).

Findings related to removals

Key study findings related to removals include:

Program factors were the most powerful and significant predictors of successful removal, especially the use of technology and status at intake. Status at intake was reflective of the participant's level of supervision while in ISAP.

- Compared to participants without technology, those with GPS tracking systems installed had 7.4 times higher odds of removal. Those with Telephonic Reporting (TR) had a 3.4 times higher rate of successful removal.

- Status at intake—a participant's legal stage in the immigration court process—was also predictive of successful removal. Participants with post-order, appeal, or POCR-RFR status were more likely to be removed when compared to pre-order participants. The highest level of supervision was most predictive of successful removal. Possibly, the legal stage was the predictor; the level of supervision was the predictor; or both.

Demographic characteristics were also powerful predictors of successful removal.

- Age was the most predictive variable. Younger participants were more likely to depart. Compared to participants between 18 and 30 years old, those between 31 and 44 had 22.8% lower odds of removal and those 45 and older had 29.3% lower rate of removal.
- Women were more likely to successfully depart than men.
- Participants from Mexico were more likely to depart to their home nation when compared to participants from Central/South America, Africa, Europe, and Asia.

Legal factors were also predictive of successful removal.

- Participants without a criminal history had 21.5% higher odds of departing than those with at least one criminal conviction.
- Participants referred from detention were more likely to depart than those referred from the criminal alien program.

While social characteristics were not as predictive as other variable categories, they did yield some interesting findings.

- Participants with motorized transportation were more likely to depart than those without motorized transportation.
- Compared to non-high school graduates, those with some college education were more likely to depart.
- Participants requiring an interpreter were more likely to be removed than participants proficient or fluent in English.
- Participants with fewer non-family contacts had a higher likelihood of departure than those with a higher number of non-family contacts.
- Unemployed participants were more likely to depart than employed participants.

Findings Related to Participants Who Absconded

In contrast to the successful removal model, in which program factors provided the most explanatory power, social characteristics best predict when a participant would abscond. Variables that were associated with increased absconding provide insight for case specialists to decrease participant flight risk.

Key study findings include:

Certain social characteristics were able to best predict absconding.

- Participants who were proficient or fluent in English had 15.9% and 34.3% lower odds, respectively, of absconding than participants requiring or having an interpreter recommended

- Participants had 1.4 times higher odds of absconding if they had received a higher number of program referrals.
- Participants with motorized transportation had 1.3 times lower odds of absconding than participants without access to their own motorized transportation, and participants renting their homes had 1.3 times higher odds of absconding than participants who owned their homes.
- Participants who reported a low number of family and non-family contacts were more likely to abscond. Employed participants were less likely to abscond than unemployed participants.

Demographic, program and legal characteristics had predictive effects on absconding as well.

- A male participant had 1.4 times higher odds of absconding than a female participant. Also, participants between the ages of 18 and 30 were more likely to abscond than participants older than 31.
- Participants in the Central and South American regions were more likely to abscond than those from Mexico (other countries showed no significant differences).
- Participants on GPS tracking were less likely to abscond than those not on GPS.
- Participants with a post-order status at intake were less likely to abscond than those with a pre-order status. Post-order status participants received a higher level of supervision than pre-order participants. Possibly, the legal stage was the predictor; the level of supervision was the predictor; or both.

- Being referred from the criminal alien program and not having an attorney were both powerful and significant predictors of absconding. Participants referred from the criminal alien program had 1.7 times higher odds of absconding than those referred from detention. Participants who did not have an attorney had 1.6 times higher odds of absconding than those who did have an attorney.

Study Recommendations

This study provided insights for possible improvements to the ISAP model, including:

1. The study results indicated that several variables predicting successful removal are operating differently from those predicting flight-risk. Therefore, developing two validated assessment tools that predict (1) successful removal and (2) absconding is recommended.

2. Use the factors identified from these assessment tools to develop the participant's supervision plan.

3. Given the apparent effectiveness of the use of technology with the full-service supervision component on outcomes, additional research is suggested for participants in the technology-only component. The annual report outcomes clearly revealed the use of technology alone is not as successful in securing removals or mitigating absconding as the integration of the full-service case management model. Additional research comparing full-service and technology-only would provide a more purified measure of technology's effectiveness.

4. While this study looked specifically at successful removals and absconding, appearance at final hearings is another important milestone in overall program success. It is recommended that an analysis of final hearing attendance be considered as an addendum to this study.

5. Deeper understanding of the findings might be enhanced by integrating geographic indicators (such as ISAP office location) as independent variables.

Exhibit I

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

[SEAL OMITTED]

SPECIAL REPORT

NOVEMBER 2012 NCJ239243

Pretrial Release and Misconduct in Federal District Courts, 2008-2010

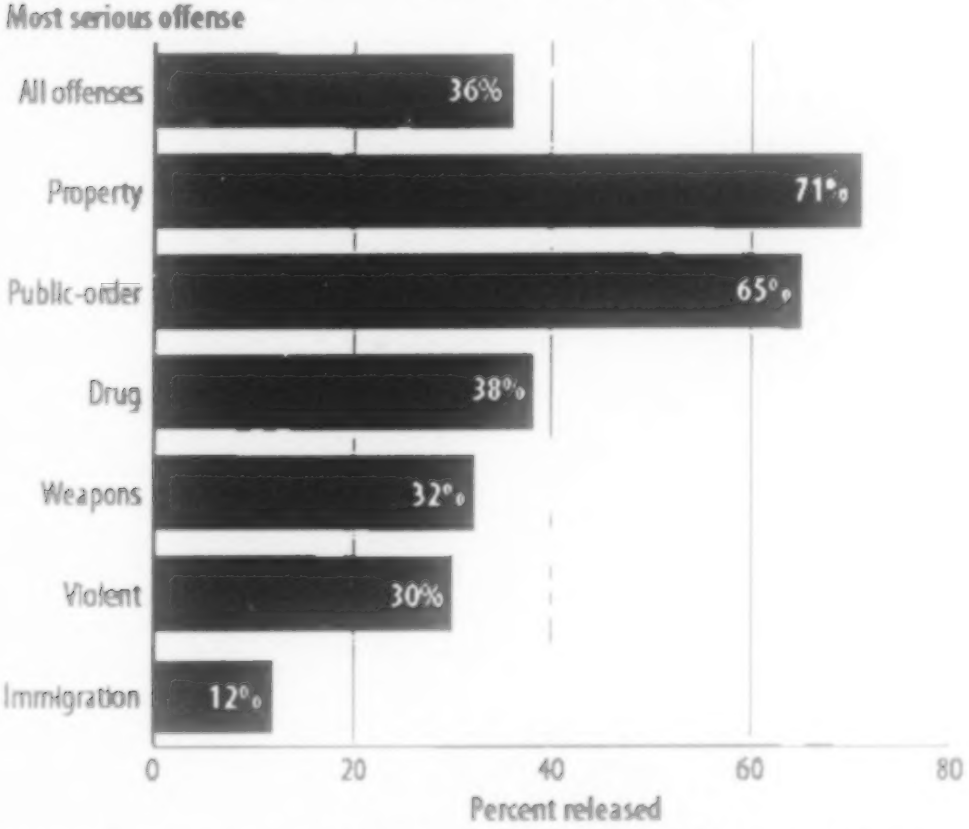
Thomas H. Cohen, Ph.D., *BJS Statistician*

During fiscal years 2008 through 2010, 36% of the 283,358 defendants in cases disposed in federal district courts were released prior to case adjudication. The percentages of pretrial release ranged from 12% for defendants brought into federal courts for immigration violations to 71% for defendants charged with property offenses (figure 1). Nineteen percent of released defendants committed some form of pretrial misconduct, and technical violations accounted for 90% of these pretrial violations.

Data for the Bureau of Justice Statistics' (BJS) Federal Justice Statistics Program (FJSP) were provided by the Administrative Office of the U.S. Courts' (AOUSC) Office of Probation and Pretrial Services Automated Case Tracking System (PACTS). The PACTS data cover various aspects of pretrial release in federal district courts, including the decision to release or detain a defendant, the different mechanisms of release or detention, and the behavior of defendants while on pretrial release. The PACTS data analyzed for this report include defendants whose

cases were disposed by the federal courts for the combined fiscal years of 2008 to 2010.

FIGURE 1
Defendants released pretrial for cases disposed in federal district courts, by offense type, FY 2008–2010



Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services Automated Case Tracking System, 2008–2010.

HIGHLIGHTS

- Thirty-six percent of defendants in cases disposed in federal courts from 2008 to 2010 were released pretrial.
- Federal courts released 10% of noncitizen defendants identified as illegal aliens, compared to 43% of legal aliens and 55% of U.S. citizens.

- Twenty-four percent of these defendants were released at the time of their initial appearance, while another 12% were detained and then released at subsequent court events, including detention or bond hearings.
- Nonfinancial methods, including release on personal recognizance or unsecured bond, accounted for 73% of pretrial releases in federal courts.
- Ninety-one percent of detained defendants were held on either court-ordered detention or because they could not meet certain conditions set by the court.
- Of defendants released pretrial, 79% were released with conditions, including travel restrictions, substance abuse treatment requirements, weapons restrictions, or promises to remain employed or seek employment.
- About half (51%) of defendants with no prior arrest history were released pretrial, compared to 34% of defendants with 2 to 4 prior arrests and 21% of defendants with more than 10 prior arrests.
- Nineteen percent of defendants released pretrial committed some form of pretrial misconduct.
- Technical violations were committed by 17% of defendants released prior to case disposition, while 1% of released defendants failed to make court appearances and 4% were rearrested for new offenses.

The PACTS data provide important information about pretrial release and misconduct in the nation's federal courts. These data do not cover pretrial release in state courts. In an effort to provide comprehensive information on pretrial release, this report compares

several aspects of the pretrial process in federal and in state courts. While no statistical series have national level estimates of pretrial release and misconduct in state courts, BJS has sponsored the State Court Processing Statistics (SCPS) project, which examines pretrial release and misconduct for felony cases filed in the nation's 75 most populous counties. Therefore, the SCPS data are referenced in this report when comparing state and federal pretrial statistics. (See *Methodology* for more information about the SCPS.)

Pretrial release and detention in the federal criminal justice system

Before 1966, the federal courts relied almost exclusively on financial bond. In a bond system, persons accused of criminal conduct can remain free pending case disposition by posting a bond, usually property or money, as a guarantee that they will make all court appearances. In most situations, defendants will post a percentage of the bond set with a bail bondsman or with the court through a deposit bond program. Congress enacted the Bail Reform Act of 1966 to reform federal pretrial practices and minimizing the use of financial bond. The act mandated that any defendant charged with noncapital offenses in federal courts be released on either their own recognizance or an unsecured appearance bond (see *Methodology*). In cases that required additional supervision, the court could impose other conditions necessary to assure that a defendant made all court appearances.

The Bail Reform Act of 1984 (18 U.S.C. Section 3141) further codified the pretrial release process. According to the act, when defendants first appear before a judicial officer they may be 1) released on personal

recognizance or unsecured bond, 2) released subject to conditions imposed by the court, 3) temporarily detained to permit deportation, exclusion, or the revocation of previously granted conditional release, or 4) detained pending the outcome of a detention hearing. At a detention hearing, the government is required by the act to prove by clear and convincing evidence that no condition of release would reasonably ensure that the defendant would appear for trial and not pose a risk to the community. The Bail Reform Act of 1984 also expanded the scope of factors that federal courts could consider when making pretrial release decisions to include the degree of dangerousness a defendant poses to the community.

* * * * *

17% of federal defendants released prior to case disposition committed technical violations

Technical violations (such as violations of pretrial conditions, including drug test failure or failure to maintain electronic reporting requirements) were committed by 17% of defendants released prior to case disposition from 2008 to 2010 (table 11). Defendants released on weapons (30%), drug (25%), and violent (24%) offenses had the highest rates of technical violations, while immigration defendants released pretrial had the lowest rates of violating their pretrial conditions (6%). The relatively low rate of technical violations for immigration defendants may be due to federal courts typically not attaching pretrial conditions to these defendants when released prior to disposition.

From 2008 to 2010, relatively few released defendants either failed to make court appearances (1%) or were rearrested for new offenses (4%). The percentage of defendants with missed court appearances did not exceed 2% across the major offense types. Rearrest percentages ranged from 1% for immigration defendants to 8% for weapons defendants.

Fifty-six percent of defendants who committed misconduct had their release revoked by the federal courts (not shown in table). Twenty-one percent of released weapons and more than 15% of violent (18%) and drug (16%) defendants had their release revoked, while less than 10% of released property (7%), public-order (6%), and immigration defendants (4%) had a pretrial release revocation.

In comparison, a third of released defendants in the nation's 75 most populous counties committed some form of pretrial misconduct during 2006. Half of pretrial misconduct events involved bench warrants that were issued due to missed court appearances, while a similar percentage of defendants with pretrial misconduct were rearrested for new offenses committed during the pretrial release period (not shown in table). In 2006, the percentage of defendants charged with pretrial misconduct was highest for drug defendants (37%) and lowest for those released after being charged with a violent offense (26%) (not shown in table).

TABLE 11
Behavior of defendants released pretrial for cases disposed in federal district courts, by offense type, FY 2008–2010

Most serious offense charged	Number of released defendants	Percent of released defendants who had—				
		At least one violation	Failed to appear	Technical violations of bond conditions	A rearrest for new offense*	Release revoked
All defendants	101,622	19%	1%	17%	4%	11%
Violent	2,660	26%	1%	24%	4%	18%
Property	31,332	15%	1%	13%	3%	7%
Fraudulent	25,378	14	1	12	3	7
Other	5,954	16	1	14	3	9
Drug	31,887	28%	2%	25%	5%	16%
Trafficking	26,683	29	2	26	6	17
Other	5,204	24	2	23	4	12
Public-order	15,058	12%	1%	11%	2%	6%
Regulatory	2,818	10	1	9	2	5
Other	12,240	12	1	11	2	6
Weapons	7,127	33%	2%	30%	8%	21%
Immigration	11,939	7%	1%	6%	1%	4%

Note: Detail will not sum to total because a defendant could have more than one type of violation. Information on offense type available for 98.4% of released defendants.

*Includes felony and misdemeanor offenses.

Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services Automated Case Tracking System, 2008–2010

Declaration of Susan B. Long

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

1. My name is Susan B. Long. I am Associate Professor of Managerial Statistics at the Martin J. Whitman School of Management at Syracuse University. I have been retained by counsel for Petitioners as an expert in this matter.

2. In my capacity as an expert, I reviewed the expert report of Dr. Chester Palmer, submitted by the Respondents in this case. In the course of reviewing Dr. Palmer's analysis of continuance data, I discovered significant inconsistencies between the data relied on by Dr. Palmer for his analysis and the database information produced to the Petitioners in this matter. I summarized those inconsistencies in my Rebuttal Expert Report.

3. I have reviewed the Declaration of Benjamin McDowell, submitted in connection with the Respondents' Motion for Summary Judgment, which purports to explain the inconsistencies in Respondents' data. I have also reviewed Mr. McDowell's prior declarations submitted in this action and the transcript of his deposition taken on December 19, 2011, as well as information produced by Respondents in discovery regarding the Executive Office of Immigration Review ("EOIR") database from which the information for Dr. Palmer's analysis was drawn. In addition, through my work as the Co-Director of the Transactional Records Access Clearinghouse at Syracuse University, I have gained extensive experience and knowledge of the

databases maintained by EOIR. A summary of my relevant experience is contained in the appendix to my Expert Report.

4. Mr. McDowell's declaration contains new information about the EOIR database and EOIR data entry practices that had not previously been disclosed by Mr. McDowell or the Respondents in this matter. Based on this new information, it is clear that at least two of the assumptions underlying Dr. Palmer's analysis of the amount of time attributable to "alien-caused" delays are false.

5. First, Mr. McDowell's declaration clarifies that the field "ADJ_DATE" in the Schedule Table refers to the date on which a hearing is *scheduled*, not the date on which a hearing in fact takes place or the date on which the adjournment is requested and/or granted. This is apparent from an example provided in Mr. McDowell's declaration at paragraph 13. There he explains that to match the particular date shown in the Schedule Table with an adjournment shown in the Actions Table, you cannot rely on the ADJ_DATE recorded in the Schedule Table. Instead you need to use an entirely different date field ("UPDATE_DATE") from the Schedule Table—a date field Dr. Palmer did not use based on his own description of his analysis. Using this entirely different field, Mr. McDowell shows that the scheduled September 2, 2010 hearing date was actually adjourned on August 30, 2010—three days prior to the date of the scheduled hearing as reflected in the Schedule Table. As the Action Table for this case shows, a motion for contin-

uance was granted and the adjournment entered on the earlier of these two dates.[1] The entries corresponding to the scheduled September 2, 2010 hearing date from paragraph 13 of Mr. McDowell's declaration and from Exhibit 3 from the deposition of Dr. Palmer record the following sequence of events.

EOIR Schedule Table [from McDowell Declaration Para 13 showing new field]

(emphasis added)

IDNCASE	ADJ_RSN	ADJ_DATE	UPDATE_DATE
6566575	12	9/2/2010	9/1/2010

EOIR Actions Table [from Exhibit 3 of the November 27, 2012 deposition of Dr. Palmer]

IDNCASE	IDNACTION	DATACTION	STRDESCRIPTION	STRREACTION
6566575	34811435	30-Aug-10	Motion for a Continuance	Filed
6566575	34816223	30-Aug-10	Motion for a Continuance Disposition Entered	GRANTED
6566575	34816230	30-Aug-10	Adjournment	Added
6566575	34869451	01-Sep-10	Adjournment	Edited

Thus, by his own testimony, McDowell demonstrates that his prior statements indicating that "[t]he Schedule Table identifies . . . *when* a hearing was adjourned (ADJ_DATE)," are not correct. *See* Dkt. 299-1 ¶ 3 (emphasis added). *See also id.* at Exh. A ¶ 4; *id.* at Exh. B ¶ 4. In fact, according to his new

[1] A change in the adjournment information, but not the date of the adjournment, also was made the following day, September 1, when adjournment information was edited. McDowell uses this fact in matching up the UPDATE_DATE in the record from the Schedule Table to the corresponding set of entries in the Action Table.

declaration, the Schedule Table may identify when a hearing is originally scheduled, but that date may change based on information contained in the Update field.

6. Dr. Palmer's analysis is premised on an assumption that the "ADJ_DATE" field contains the date that an adjournment was requested and granted. Based on the new information provided in Mr. McDowell's declaration, however, it is clear this assumption is false. This affects Dr. Palmer's analysis because he bases his calculation of "delay due to an adjournment" on the number of days from the date shown in the "ADJ_DATE" field to the next scheduled hearing date. If the date contained in the ADJ_DATE field is not the date of the actual adjournment, then the calculated delay due to an adjournment will be incorrect.

7. Second, Mr. McDowell's declaration clarifies that hearing dates in immigration cases are not always scheduled chronologically. In the same example discussed above, the Schedule Table shows a hearing scheduled for August 26, 2010 and a second later hearing scheduled for September 2, 2010. Mr. McDowell states at paragraph 7 that "The hearing for September 2, 2010, was created on August 10, 2010." Thus while the September 2 hearing was scheduled to occur *after* the August 26 hearing, it was already scheduled *well before* the August 26 hearing was to occur.

8. Dr. Palmer's analysis is premised on an assumption that hearings are scheduled chronologically. That is, that the example we saw of a previously-

scheduled hearing never occurs. Dr. Palmer assumes that *only* if a hearing is adjourned will any later hearing ever be scheduled.

9. This incorrect assumption results in two types of errors in Dr. Palmer's calculations. First, when hearings are not scheduled chronologically, it makes little logical sense to assume that the specific number of days between the two hearings are in fact a *delay*. In such instances, the events at the prior hearing could not have necessitated the scheduling of the subsequent one—as the subsequent one had already been scheduled. Second, Dr. Palmer classifies this period as *alien-caused* when the adjournment reason for the immediately prior hearing was at the alien's request. However, when hearings are not scheduled chronologically, the second hearing was not *caused* by that prior adjournment, and it is incorrect to use the reason for that adjournment to attribute the party responsible for the "delay."

10. While these incorrect assumptions determined how Dr. Palmer calculated alien-caused delays and therefore affected Dr. Palmer's results, I cannot estimate how substantial of an effect these incorrect assumptions had based on the limited information that the government has produced in this case. To measure the effect of Dr. Palmer's erroneous assumptions, I would as a starting point need to be able to accurately link the details contained in the Actions Table to the specific scheduled hearing to which they relate in the Schedule Table. This in turn requires the "UPDATE _DATE" values from the Schedule Table because, as Mr. McDowell now indicates in paragraph 13 of his

declaration, the dates in this field are needed to "determin[e] which schedule record goes with each action record." However, I only have the contents of the UPDATE_DATE field for the single case shown in Mr. McDowell's latest declaration. The UPDATE_DATE field was not included in any of the ACCESS files released to the Petitioners' counsel or otherwise available to me (or, apparently, to Dr. Palmer). Thus, I do not have the EOIR data required to carry out the analysis needed to determine the magnitude of error introduced by Dr. Palmer's incorrect assumptions.

11. Mr. McDowell's declaration also purports to address the inconsistencies between the Schedule and Actions Table data that I documented in my Rebuttal Expert Report. In his declaration, Mr. McDowell includes a table with information from the Schedule and Actions tables for a single case. In that table, Mr. McDowell provided information from a field—"UPDATE_DATE"—regarding the date on which the Schedule Table was updated for the case in question. Information from this field had not previously been included in any of the ACCESS files released to the Petitioners' counsel or otherwise available to me. Mr. McDowell's relies on the UPDATE_DATE" field information to explain the inconsistencies in the Schedules and Action Tables with respect to this individual case, but because the government has not provided this field for any of the other cases I analyzed, there is no way for me to verify his explanation for the entire dataset.

12. Even though the government has not provided the information necessary to assess the validity of Mr. McDowell's claims, the limited information provided

by Mr. McDowell raises additional questions regarding the reliability of data in the Schedule Table. For example, in the illustrative case discussed by Mr. McDowell, there is an entry with an "ADJ_DATE" for 3/1/2011 with an "UPDATE_DATE" of 3/28/2011. Based upon the information provided by Mr. McDowell, there is no way to determine whether a hearing or adjournment in fact occurred on 3/1. Reprinted below is the record from the Schedule Table from McDowell's declaration for this hearing.

IDNCASE	ADJ_RSN	ADJ_DATE	UPDATE_DATE
6566575	13	3/1/2011	3/28/2011

There are three entries on 3/28/2011 in the Actions Table for this case as shown below (from Exhibit 3 of the November 27, 2012 deposition of Dr. Palmer).

IDNCASE	IDNACTION	DATACTION	STRDESCRIPTION	STRREACTION
6566575	40536459	3/28/2011	Adjournment	Added
6566575	40536669	3/28/2011	Individual Hearing	Scheduled
6566575	40537568	3/28/2011	Actions - Worksheet	Generated

There is no entry in the Actions Table of any kind on 3/1. Indeed, the above three entries are the only entries in the Actions Table during the period following December 7, 2010 until April 19, 2011. Based on this information we cannot tell whether the hearing scheduled for 3/1 took place, and we also cannot be sure when the 3/1 scheduled hearing was adjourned. If we rely on Mr. McDowell's method for matching records from the Actions Table with the Schedule Table, that method indicates that the adjournment was officially recorded on 3/28. Does that mean that the adjournment occurred on 3/28, nearly four-weeks after

the date of the scheduled hearing on 3/1? Or that the hearing on 3/1 was adjourned, but the data reflecting that adjournment was not entered for nearly four weeks after the scheduled hearing? Because Mr. McDowell has stated that the "UPDATE_DATE" field was not designed with the purpose of linking these two tables, see Dkt. 299-1 ,¶5, there is no way to determine the relationship between the entries in Action and Schedule Tables based on the information provided. As such, we simply cannot tell for sure whether the hearing or adjournment in fact occurred on 3/1 based on the information that the government has provided.

13. Mr. McDowell's declaration also purports to explain the inconsistencies between the Schedule Table and the Actions Table in three other individual cases. However, Mr. McDowell did not provide information from the "UPDATE_DATE" for these three cases. As such, it is impossible for me to verify the accuracy of his assertions regarding the relationship of the Schedule and Actions tables in those cases. Respondents have not provided information from the "UPDATE_ DATE" field in the Schedule Table, aside from the single case cited in Mr. McDowell's declaration.[2]

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[2] Indeed, the one example of apparent discrepancies which Mr. McDowell identifies as "really [] not discrepancies at all" *was not counted as a discrepancy* in my analysis. Mr. McDowell observes that the Actions Table had the same number of adjournments entries as the number of scheduled hearings in the Schedule Table, once the Actions Table data is limited to "Added" entries and the "Edited" entries are excluded. However, I already excluded all "Edited" adjournment records from my analysis. *See* Dkt. 281-6, Exh. B at 4 n.2. In addition, the difference between the 9/2/2010

Without the information recorded in the UPDATE_DATE field corresponding to each scheduled hearing, I have no way to verify if in fact this additional information would account for the large number of inconsistencies I found between the "ADJ_DATE" in the Schedule Table and the "Adjournment" date entered in the Actions Table. Only with this additional information can I determine whether this would allow me to (a) "match" each scheduled hearing in the Schedule Table with a specific adjournment in the Actions Table, and (b) verify that each adjournment in the Actions Table "matches" a specific scheduled hearing in the Schedule Table. Because of the significant inconsistencies I documented between the Action and Schedule tables, being able to carry out successful matching in this way is essential to determine whether Dr. Palmer relied on sufficiently reliable data.

14. I did not receive word that Respondents had disclosed updated database information for the studied class members until after I completed the analysis for my Expert Report in this action. I did analyze the updated data for the purposes of my Rebuttal Expert Report. The updated data did not materially affect any of the statistics reported in my Expert Report—that is, result in *lower* values for detainee success or detention length. If anything, the reported statistics on detention time would have generally been

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date of the scheduled hearing and its 8/30/2010 adjournment also was not included in my count of records that did not match since any dates within plus/minus 3 days of one another, as these are, were treated as a "match." *See* Dkt. 281-6, Exh. B at 5.

somewhat higher with the updated data than those I reported in my original Expert Report.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed this 4th day of Apr., 2013 in Syracuse, New York.

/s/ SUSAN B. LONG
SUSAN B. LONG

Declaration of Benjamin B. McDowell

March 15, 2013

I, BENJAMIN B. McDOWELL, declare as follows:

1. I am a program analyst with the Department of Justice, Executive Office for Immigration Review (EOIR) in Falls Church, Virginia. I have been a program analyst with EOIR since February 1, 2010. I am familiar with, and routinely use and rely on, EOIR's CASE program. CASE is the Informational Resource Management System that provides EOIR with case tracking and management information, office automation, Internet/Intranet, and automated legal research service. CASE allows users to access database information about various aspects of an individual's removal proceedings before the immigration courts.

2. I am familiar with this litigation. In 2010, I was asked by counsel for Respondents to assist in providing certain categories of database information accessed through CASE in response to discovery requests. I created a readable ACCESS database containing the requested information in various tables, along with lookup tables that serve as keys for abbreviations or codes used in the database. ACCESS is a commercially available Microsoft program that allows users to view and create tables from information compiled by the user. The ACCESS database has several tables, including both a Schedule Table and an Actions Table.

3. The purpose of the Schedule Table is to record metadata about hearings that take place in the Immi-

gration Courts. The Schedule Table identifies certain actions in a removal proceeding by an alien number (or IDNCASE number) and a proceeding number (or IDNPROCEEDING number). The Schedule Table identifies the dates of hearings and other actions before an immigration court in a proceeding, including whether a hearing was concluded or rescheduled, or, as the database refers to it, "adjourned." The Schedule Table identifies, for example, when a hearing was adjourned (ADJ_DATE), and the reason indicated by court staff for the adjournment, or "adjournment code" (ADJ_RSN). The database also identifies the type of hearing, or "schedule type," which is typically a master calendar hearing, a reset master calendar hearing, a custody hearing, or a merits or individual hearing (these codes are found under the SCHEDULE_TYPE column of the table.

4. As I more thoroughly explained in my declarations dated July 18, 2012, and December 14, 2012, if the user were to look at an individual's proceeding in the Schedule Table, the user would be able to identify the dates of all of the hearings in that proceeding. The user would also be able to see the reason that each hearing was concluded and, if a future hearing was scheduled, why the case did not conclude at the previous hearing. For example, the user could see that the individual had a hearing scheduled for a particular day. The user could also look down the table and, if there were a subsequent hearing date, the user could determine that the case was continued from the earlier date until the later date. The user could also determine which party requested the continuance and the reason for the request by looking at the adjournment code

associated with the earlier hearing. Thus, the table lists the individual's hearing dates, the reasons for scheduling future hearing dates, and the party or parties requesting the future hearings.

5. The Actions Table stores information concerning actions to a record in CASE. Records from the Schedule Table and the Actions Table cannot be programmatically linked to one another. However, the records in each of these tables can be analyzed to determine how they correspond to one another. A record in the schedule table can be linked to a record in the case table by the IDNCASE, and a record in the actions table can also be linked to a record in the case table by the IDNCASE, but there is no data element in one of these tables that can be linked to a key in the other. This means that the most direct correlation that can be programmatically made between these two tables is that they each belong to the same case. Each hearing in the schedule table will have a corresponding entry in the actions table.

6. I have reviewed the certified transcript and exhibits from the deposition of Dr. Chester Palmer taken by Petitioners on November 27, 2012. At Dr. Palmer's deposition, Petitioners asked Dr. Palmer about a set of documents entered as exhibits 3-7 to Dr. Palmer's November 27, 2012 deposition. Counsel represented that each of exhibits contained two set of information for a particular IDNCase: (1) the complete list of all of the information from the Schedule Table; and (2) the complete list of all of the information from the Actions Table. In the paragraphs below I briefly describe the information in the exhibits and the relationship between the information in the Schedule Table

and the Actions Table in each of the exhibits. The explanations are based on my review of the exhibits and my experience working with the CASE system.

7. Exhibit 3 to Dr. Palmer's Deposition (IDNCase 6566575), which is attached as Exhibit R to the March 15, 2013 declaration of Theodore W. Atkinson:

There are seven adjournments for this case. Three of these adjournments are alien caused delays, and for this case one of those hearings was adjourned with the adjournment code of 12 and two were adjourned with the adjournment code of 02. These three adjournments aggregately delayed the case for 96 days. These adjournments did occur during the time that this alien was in custody, and in fact all were during the first 180 days of custody. Each of the adjournments that were recorded has a corresponding action recorded. The hearing for September 2, 2010, was created on August 10, 2010, and was last updated on September 1, 2010, and there is an action dated September 1, 2010, with the IDNACTION of 34869451 that corresponds with this adjournment. This hearing had been entered previously on August 30, 2010, and there is an action dated August 30, 2010, with the IDNACTION of 34816230 that corresponds with the original entry of this adjournment. The hearing for March 1, 2011, was created on December 7, 2010, and there is an action dated March 28, 2011, with the IDNACTION of 40536459 that corresponds with this adjournment.

8. Exhibit 4 to Dr. Palmer's Deposition (IDNCase 6426393), which is attached as Exhibit R to the March 15, 2013 declaration of Theodore W. Atkinson:

There are six adjournments for this case. Four of these adjournments are alien caused delays, and for this case two of those hearings were adjourned with the adjournment code of 12, one was adjourned with the adjournment code of 06, and one was adjourned with the adjournment code of 02. These four adjournments aggregately delayed the case for 121 days. These adjournments did occur during the time that this alien was in custody, and in fact all were during the first 180 days of custody. Each of the adjournments that were recorded has a corresponding action recorded. There were two hearings recorded for this case on March 2, 2010. One of those hearings was an initial master hearing, and the other hearing was a custody hearing.

9. Exhibit 5 to Dr. Palmer's Deposition (IDNCase 6475284), which is attached as Exhibit R to the March 15, 2013 declaration of Theodore W. Atkinson:

There are six adjournments for this case. One of these adjournments is an alien caused delay, and for this case that hearing was adjourned with the adjournment code of 12. This adjournment delayed the case for 7 days. This adjournment occurred during the first 180 days of custody. Each of the adjournments that were recorded has a corresponding action recorded. The hearing for April 20, 2010, was created on April 12, 2010, and there is an action dated April 19, 2010, with the IDNACTION of 31436065 that corresponds with this adjournment. The hearing for June 24, 2010, was created on April 27, 2010, and there is an action dated June 28, 2010, with the IDNACTION of 33320049 that corresponds with this adjournment. This adjournment for this hearing had been entered

previously on June 25, 2010, and there is an action with the IDNACTION of 33289209 that corresponds with the entry of this adjournment. The hearing for November 5, 2010, was created on October 1, 2010, and there is an action dated November 8, 2010, with the IDNACTION of 36801581 that corresponds with this adjournment. An application for asylum was received by the courts on April 27, 2010, and was subsequently granted on February 9, 2011.

10. Exhibit 6 to Dr. Palmer's Deposition (IDNCase 6497927), which is attached as Exhibit R to the March 15, 2013 declaration of Theodore W. Atkinson:

There are sixteen adjournments for this case. Three of these adjournments are alien caused delays, and for this case one of those hearings was adjourned with the adjournment code of 05, one was adjourned with the adjournment code of 12, and one was adjourned with the adjournment code of 36. These three adjournments aggregately delayed the case for 245 days. Forty-nine days worth of the delays occurred during the time that this alien was in custody, and these were during the first 180 days of custody. Each of the adjournments that were recorded has a corresponding action recorded. The hearing on August 5, 2010, is an alien caused delay that was created on May 25, 2010, and there is an action dated July 30, 2010, with the IDNACTION of 34058631 that corresponds with this adjournment. The hearing on September 23, 2010, was created on July 30, 2010, and there is an action dated August 5, 2010, with the IDNACTION of 34217272 that corresponds with this adjournment. The hearing for June 5, 2012 was created on November 22, 2011, and there is an action dated

April 26, 2012, with the IDNACTION of 51645765 that corresponds with this adjournment. The hearing for July 3, 2012, was created on April 26, 2012, and there is an action dated July 3, 2012, with the IDNACTION of 53507407 that corresponds with this adjournment. The hearing for January 10, 2011, was created on October 5, 2010, and there is an action dated December 7, 2010, with the IDNACTION of 37540781 that corresponds with this adjournment. The hearing for March 18, 2011, was created on March 14, 2011, and there is an action dated March 21, 2011, with the IDNACTION of 40349627 that corresponds with this adjournment. The hearing for November 22, 2011, was created on September 20, 2011, and there are two actions dated November 22, 2011, with the IDNACTIONs of 47348501 and 47353577 that correspond with this adjournment to add and then to edit this adjournment respectively.

11. Exhibit 7 to Dr. Palmer's Deposition (IDNCase 6292159) which is attached as Exhibit R to the March 15, 2013 declaration of Theodore W. Atkinson:

There are seven adjournments for this case. Three of these adjournments are alien caused delays, and for this case two of those hearings were adjourned with the adjournment code of 12 and one was adjourned with the adjournment code of 06. These three adjournments aggregately delayed the case for 96 days. All of the delays occurred during the time that this alien was in custody, and these were all during the first 180 days of custody. Each of the adjournments that were recorded has a corresponding action recorded. The hearing for December 23, 2009, was created on October 15, 2009, and there are two

actions, both dated December 1, 2009, with the IDNACTION of 24681911 and 24682306 that correspond with this adjournment for adding and editing this adjournment respectively.

12. It would be improper to determine whether information in the Actions Table corresponds with information in the Schedule Table based on the number of records in the Actions Table as compared to the number of records in the Schedule Table. Although there is no mechanism for directly linking scheduled hearings to the actions that were recorded for them in the actions table, it can be determined that each hearing in the Schedule Table has a corresponding entry in the action table for the record being added, and in the instance where the hearing record was subsequently edited, that hearing will have an additional entry in the Action Table for the editing of the record.

13. Below I offer an example of how what may be appear to be discrepancies between the Schedule Table and the Actions Table really are not discrepancies at all. The following is the information from the Schedule Table and the adjournment information in the Actions Table for IDNCase 6566575:

Schedule Table				Action Table			
IDNCASE	ADJ_RSN	ADJ_DATE	UPDATE_DATE	DATACTION	STRDESCRIPTION	STRREACTION	IDNACTION
6566575	8A	8.26.2010	8.26.2010	8.26.2010	Adjournment	Added	34741637
6566575	12	9.2.2010	9.1.2010	8.30.2010	Adjournment	Added	34816230
				9.1.2010	Adjournment	Edited	34869451
6566575	02	10.7.2010	10.7.2010	10.7.2010	Adjournment	Added	36016689
6566575	02	11.24.2010	11.24.2010	11.24.2010	Adjournment	Added	37240530
6566575	17	12.7.2010	12.7.2010	12.7.2010	Adjournment	Added	37522217
6566575	13	3.1.2011	3.28.2011	3.28.2011	Adjournment	Added	40536459
6566575	8A	4.19.2011	4.19.2011	4.19.2011	Adjournment	Added	41233335

For case 6566575, there are seven records in the schedule table for hearings, and there are eight records in the action table with the STRDESCRIPTION value of "Adjournment," but seven with the STRREACTION value of "Added." The method for deter-

mining which schedule record goes with each action record is to examine the UPDATE_DATE value, which is the date the record was last updated, in the schedule table and compare it to the DATACTION value, which is the date on which the action was added, in the action table. For the 8/26/2010 adjournment for this case, both of these values are on 8/26/2010. The exception to this occurs when a schedule record has been edited subsequent to its being added. In case 6566575, there are no action records with a STRREACTION value of "Added" that match the adjournment of 9/2/2010 with the UPDATE_DATE value of 9/1/2010, but the action record for this case with a STRREACTION value of "Edited" does match this date. The action record for this hearing being "Added" does have a DATACTION value of a prior date, 8/30/2010, and the IDNACTION for this action (34816230) is a number that came up sequentially before this record was "Edited" (34869451).

14. A true and correct copy of my declaration dated July 18, 2012, is attached as Exhibit A to this declaration.

15. A true and correct copy of my declaration dated December 14, 2012, is attached as Exhibit B to this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Date: Mar. 15, 2013

/s/ BENJAMIN B. MCDOWELL
BENJAMIN B. MCDOWELL

Exhibit A: Declaration of Benjamin McDowell

July 18, 2012

I, BENJAMIN B. McDOWELL, declare as follows:

1. I am a program analyst with the Department of Justice, Executive Office for Immigration Review (EOIR) in Falls Church, Virginia. I have been a program analyst with EOIR since February 1, 2010. I am familiar with, and routinely use and rely on, EOIR's CASE program, which allows users to access database information about various aspects of an individual's removal proceedings before the immigration courts.

2. I am familiar with this litigation. In 2010 I was asked by counsel for Respondents to assist in providing certain categories of database information accessed through CASE in response to discovery requests. I created a readable ACCESS database containing the requested information in various tables, along with lookup tables that serve as keys for abbreviations or codes used in the database. ACCESS is a commercially available Microsoft program that allows users to view and create tables from information compiled by the user. I have updated this database on several occasions, and provided it to EOIR counsel for production to attorneys for Petitioners in this case. The most recent update was conducted in or around late April 2012.

3. I have reviewed portions of the ACCESS database for the purpose of providing counsel for EOIR with representative samples of removal proceedings in which the database information indicates that a

hearing was rescheduled—or, as CASE refers to it "adjourned"—for certain reasons indicated by immigration court staff in the database.

4. The information provided below was determined by examining within the ACCESS database the following:

(1) the Schedule Table Data table, which identifies certain actions in a removal proceeding, identifying the proceeding by an alien number (or IDNCASE number) and a proceeding number (or IDNPROCEEDING number). The Schedule Table identifies the dates of hearings and other actions before an immigration court in a proceeding, including whether a hearing was concluded or rescheduled, or, as the database refers to it, "adjourned." The Schedule Table identifies, for example, when a hearing was adjourned (ADJ_DATE), and the reason indicated by court staff for the adjournment, or "adjournment code" (ADJ_RSN). The database also identifies the type of hearing, or "schedule type," which is typically a master calendar hearing, a reset master calendar hearing, a custody hearing, or a merits or individual hearing (these codes are found under the SCHEDULE_TYPE column of the table.

(2) the Lookup Adjournment Reason table, which is a key that provides a user with the definition or meaning of an adjournment code (ADJ_RSN);

(3) the Lookup Schedule Type table, which is a key that provides a user with the definition or meaning of a hearing type (SCHEDULE_TYPE); and

(4) the Case Data Table, which identifies by IDNCASE number the A number of the alien, the alien's

name, and other personal identifying information about the alien.

5. So, for example, if one were to look at an individual's proceeding in the Schedule Table and see that there was an action (or ADJ_Date) on 3/3/2012 with an adjournment code (ADJ_RSN) "02," one would then look to the Lookup Adjournment Reason and see that "02" means "PREPARATION—ALIEN/ATTORNEY/REPRESENTATIVE." One would also see from the Schedule Table the type of hearing that was conducted on that date (SCHEDULE_TYPE). If that column stated "MM," one would then turn to the Lookup Schedule Type table and see that "MM" means "Initial Master." In plain language, what this information would tell the person looking at these tables is that on March 3, 2012 there was an initial master calendar hearing which ended, according to the court staff inputting the data, to allow an alien or the alien's attorney or representative to prepare. However, the tables would not indicate anything beyond that code for additional details about the adjournment reason. One could then look down the table and if there was a subsequent hearing date, one could determine that the case was continued from March 3, 2012 to the next date. One could then turn to the Case Data table, and lookup the IDNCASE number to find the alien's name and A number. Using this process, one could determine the following.

4. Huitz-Menchu, Oscar (A number 091-414-311)

The ACCESS database contains, among other things, the following information:

Case Table Data

IDNCASE	ALIEN_NBR	ALIEN_NAME
6145280	091414311	HUITZ-MENCHU, OSCAR

Schedule Table Data

IDNCASE	IDNPROCEEDING	ADJ_DATE	ADJ_RSN	SCHEDULE_TYPE
6145280	4729351	1/21/2009	8A	CY
6145280	4729351	2/24/2009	01	MM
6145280	4729351	4/9/2009	01	MR
6145280	4729351	5/6/2009	06	MR
6145280	4729351	7/6/2009	17	MR
6145280	4729351	7/29/2009	35	II
6145280	4729351	8/21/2009	8A	II
6145280	4729351	9/1/2009	25	II

The ACCESS database shows that IDNCASE number refers to an individual identified as Oscar Huitz-Menchu (Case Table Data). Looking at that IDNCASE number in the ACCESS database, there is a proceeding identified by the IDNPROCEEDING number 4729351. The tables above show the information for the columns shown for that proceeding number in the ACCESS database. The ADJ_DATE column identifies all the dates associated with an adjournment. The ADJ_RSN column lists the identified adjournment code (which is defined on the Lookup Adjournment Reason table). The SCHEDULE_TYPE column identifies the type of action or hearing associated with the identified date for that proceeding number. According to the ACCESS database:

(a) This alien had a custody ("CY" in the Lookup Schedule Type table) action on January 21, 2009. The reason for adjournment is identified as "IJ Completion prior to hearing" ("8A" on the Lookup Adjournment Reason table).

(b) This alien had an initial master calendar hearing ("MM") on February 24, 2009. The reason for adjournment is identified as "ALIEN TO SEEK REPRESENTATION" ("01").

(c) This alien had a rescheduled master calendar hearing ("MR") on April 9, 2009. The reason for adjournment is again identified as "ALIEN TO SEEK REPRESENTATION" ("01").

(d) This alien had a rescheduled master calendar hearing ("MR") on May 6, 2009. The reason for adjournment is identified as "ALIEN TO FILE OTHER APPLICATION" ("06").

(e) This alien had a rescheduled master calendar hearing ("MR") on July 6, 2009. The reason for adjournment is identified as "MC TO IC--MERITS HEARING" ("17").

(f) This alien had an individual hearing ("II") on July 29, 2009. The reason for adjournment is identified as "UNPLANNED IJ LEAVE - DETAIL/ OTHER ASSIGNMENT" ("35").

(g) This alien had an individual hearing ("II") action on August 21, 2009. The reason for adjournment is identified as "IJ Completion prior to hearing" ("8A").

(h) This alien had an individual hearing ("II") action on September 1, 2009. The reason for adjournment is identified as "TO ALLOW FOR SCHEDULING OF PRIORITY CASE" ("25").

5. Godina-Pallares, Israel (A number 095-776-691)

The ACCESS database contains, among other things, the following information:

Case Table Data

IDNCASE	ALIEN_NBR	ALIEN_NAME
6193640	095776691	GODINA-PALLARES, ISRAEL

Schedule Table Data

IDNCASE	IDNPROCEEDING	ADJ_DATE	ADJ_RSN	SCHEDULE_TYPE
6193640	4790005	4/23/2009	02	MM
6193640	4790005	6/16/2009	02	MR
6193640	4790005	7/22/2009	01	MR
6193640	4790005	9/28/2009	01	MR
6193640	4790005	11/25/2009	06	MR
6193640	4790005	2/8/2010	06	MR
6193640	4790005	3/31/2010	06	MR
6193640	4790005	4/26/2010	8A	MR

The ACCESS database shows that IDNCASE number refers to an individual identified as Israel Godina-Pallares (Case Table Data). Looking at that IDNCASE number in the ACCESS database, there is a proceeding identified by the IDNPROCEEDING number 4790005. The tables above show the information for the columns shown for that proceeding number in the ACCESS database. The ADJ_DATE column identifies all the dates associated with an adjournment. The ADJ_RSN column lists the identified adjournment code (which is defined on the Lookup

Adjournment Reason table). The SCHEDULE_TYPE column identifies the type of action or hearing associated with the identified date for that proceeding number. According to the ACCESS database:

(a) This alien had an initial master calendar hearing ("MM") on April 23, 2009. The reason for adjournment is identified as "PREPARATION—ALIEN/ATTORNEY/REPRESENTATIVE" ("02"). I note that there is a separate code in the Lookup Adjournment Reason table for "PREPARATION—DHS," which is code "03."

(b) This alien had a rescheduled master calendar hearing ("MR") on June 16, 2009. The reason for adjournment is identified as "PREPARATION—ALIEN/ATTORNEY /REPRESENTATIVE" ("02").

(c) This alien had a rescheduled master calendar hearing ("MR") on July 22, 2009. The reason for adjournment is identified as "ALIEN TO SEEK REPRESENTATION" ("01").

(d) This alien had a rescheduled master calendar hearing ("MR") on September 28, 2009. The reason for adjournment is again identified as "ALIEN TO SEEK REPRESENTATION" ("01").

(e) This alien had a rescheduled master calendar hearing ("MR") on November 25, 2009. The reason for adjournment is identified as "ALIEN TO FILE OTHER APPLICATION" ("06").

(f) This alien had a rescheduled master calendar hearing ("MR") on February 8, 2010. The reason for adjournment is again identified as "ALIEN TO FILE OTHER APPLICATION" ("06").

(g) This alien had a rescheduled master calendar hearing ("MR") on March 31, 2010. The reason for adjournment is again identified as "ALIEN TO FILE OTHER APPLICATION" ("06").

(h) This alien had a rescheduled master calendar hearing ("MR") action on April 26, 2010. The reason for adjournment is identified as "IJ Completion prior to hearing" ("8A"). I declare under penalty of perjury that the foregoing is true and correct.

Date: July 18, 2012

/s/ BENJAMIN B. McDOWELL
BENJAMIN B. MCDOWELL

Exhibit B: Declaration of Benjamin McDowell

December 14, 2012

I, BENJAMIN B. McDOWELL, declare as follows:

1. I am a program analyst with the Department of Justice, Executive Office for Immigration Review (EOIR) in Falls Church, Virginia. I have been a program analyst with EOIR since February 1, 2010. I am familiar with, and routinely use and rely on, EOIR's CASE program, which allows users to access database information about various aspects of an individual's removal proceedings before the immigration courts. EOIR's CASE program displays data stored in the EOIR database, known as EOIRDB, which is a relational database running on Microsoft's SQL Server.

2. I am familiar with this litigation. In 2010 I was asked by counsel for Respondents to assist in providing certain categories of database information accessed through CASE in response to discovery requests. I created a readable ACCESS database containing the requested information in various tables, along with lookup tables that serve as keys for abbreviations or codes used in the database. ACCESS is a commercially available Microsoft program that allows users to view and create tables from information compiled by the user. I have updated this database on several occasions, and provided it to EOIR counsel for production to attorneys for Petitioners in this case. The most recent update was conducted in or around October 2012.

3. I reviewed portions of the ACCESS database for the purpose of creating the excel spreadsheet entitled "AC Delays" for use by Dr. Chester Palmer. The information contained in the AC Delays column's labeled "IDNCASE," IDNPROCEEDING," "ADJ_ DATE," and "ADJ_RSN" was extracted from the ACCESS database's Schedule Table Data table. The information contained in the AC Delays columns labeled "alien_ name" and "alien_nbr" was taken from the ACCESS database's Case Data Table, which identifies by IDNCASE number the A number of the alien, the alien's name, and other personal identifying information about the alien. The information contained in the AC Delays column labeled "Alien Caused" was taken from the ACCESS database's data field "REGD _BY" in the Lookup Adjournment Reason table, which is a code that represents the party responsible for the hearing adjournment. I understand that this code was also provided to Dr. Palmer and Petitioners' counsel in an Excel document entitled "dbo_tblAdjournmentcodes."

4. The Schedule Table reflects all hearing related information. The Schedule Table identifies the proceeding by a case number (or IDNCASE number) and a proceeding number (or IDNPROCEEDING number). It identifies the dates of hearings before an immigration court in a proceeding, including whether a hearing was concluded or rescheduled, or, as the database refers to it, "adjourned." The Schedule Table identifies, for example, when a hearing was adjourned (ADJ_DATE), and the reason indicated by court staff for the adjournment, or "adjournment code" (ADJ_ RSN). The database also identifies the type of hear-

ing, or "schedule type," which is typically a master calendar hearing, a reset master calendar hearing, a custody hearing, or a merits or individual hearing (these codes are found under the SCHEDULE_TYPE column of the table).

5. As I more thoroughly explained in my declaration dated July 18, 2012, if the user were to look at an individual's proceeding in the Schedule Table, the user would be able to identify the dates of all of the hearings in that proceeding. The user would also be able to see the reason that each hearing was concluded and, if a future hearing was scheduled, why the case did not conclude at the previous hearing. For example, the user could see that the individual had a hearing scheduled for a particular day. The user could also look down the table and, if there were a subsequent hearing date, the user could determine that the case was continued from the earlier date until the later date. The user could also determine which party requested the continuance and the reason for the request by looking at the adjournment code associated with the earlier hearing. Thus, the table lists the individual's hearing dates, the reasons for scheduling future hearing dates, and the party or parties requesting the future hearings.

6. The most reliable way to calculate the amount of time a proceeding was delayed due to a particular continuance request using information in the ACCESS database is by using the information in the Schedule Table. The operational purpose of the Schedule Table is such that the information may be used to calculate the number of days between hearing dates where a hearing was adjourned for a specific purpose. The

most appropriate way to calculate the length of delays in the proceeding attributable to a particular reason for adjournment would be to calculate the number of days between the adjourned hearing and the next hearing as those dates appear in the Schedule Table. It would not be appropriate to calculate delays based on dates associated with data entry or data correction contained in the Actions Table.

7. It would not cause me to doubt the reliability of the information in the Scheduling Table if the Action Table did not contain parallel entries. The operational purposes of the Scheduling Table and the Action Table are distinct. The Scheduling Table is a subordinate table to the Proceeding table that captures all hearing-related metadata. The Action Table is an auditing table that holds information about actions added to a record in CASE. The Actions Table is not set up in a way that allows the user to link particular entries in the Actions Table to particular changes in the Schedule Table because there is no key that relates entries in the Actions Table and schedule information in the Schedule Table. As a result of their different operational purposes, I would not expect the tables to contain information that could be easily matched up. For the same reasons, if I wanted to check the reliability of the data contained in the Schedule Tables, I would not compare it to information in the Actions Table.

I declare under penalty of perjury that the foregoing is true and correct.

Date: Dec. 14, 2012

/s/ BENJAMIN B. MCDOWELL
BENJAMIN B. MCDOWELL

Declaration of Byron Merida

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

2. My name is Byron Merida. I am originally from Guatemala. I came to the United States in 1986 on a tourist visa and have lived here since that time. My entire immediate family lives in the United States including my mother Amparo (age 72) and my father Rafael (age 72), and my sisters Helga (age 52), and Aida (age 51) my brothers Rafael (age 53) and Oscar (age 40), and my brother in law Audenago (age 45), and my sister in law Rosa (age 35), and my nieces Helga-Livier (age 20), Maura (age 19), Jasmine (age 17) and Rosi (age 3) and Vini (age 1). Most of them are United States citizens and the rest are legal permanent residents. My ex-wife Gladis Espino is a United States citizen, but she divorced me after I had been in immigration detention for approximately 2 years.

3. During my time in the United States, I have built several businesses in the financial and computer industries. Among the business in which I was involved, I founded Mortgage Financial Group, Inc., in 2004. The company provided mortgage and real estate services, and employed approximately 10-15 people.

4. At the end of 2008, due to the economic downturn and financial pressure I was under, I made some bad decisions that I regret. In March 3rd 2009 I was convicted of Second Degree commercial burglary and sentenced to 365 days in jail. It is my only criminal conviction. In April 2009 I was about to be release

from county jail, when I got notify that I had an Immigration hold and in June 29, 2009 I was transferred to immigration custody and placed in removal proceedings.

5. In the beginning of my case, the immigration judge told me that my criminal conviction was an "aggravated felony" and that, as a result, I could not adjust my status or be released on bond. The immigration judge ordered me removed in May 11, 2011.

6. I appealed the immigration judge's ruling to the BIA, and the BIA affirmed the decision in September 30th 2011. I appealed to the Ninth Circuit in October 17th 2011. In October 2012, the Ninth Circuit granted my petition for review and remanded my case to the BIA. I filed a brief with the BIA in November 2012. I just learned that I have an immigration court hearing on March 13th 2013.

7. After I appealed to the Ninth Circuit, I received a notice of custody determination from ICE that said that they had decided not to release me.

8. From my experience working in the law library and reading legal materials, I knew I could request a *Casas* bond hearing after I appealed to the Ninth Circuit. However, I thought that the immigration judge would likely deny me release or set a very high bond because of what the judge had said to me about the seriousness of my criminal conviction. My family is currently under a lot of financial stress because my sister-in-law is very ill with multiple sclerosis and they have to spend the little money they have taking care of her. Even if the judge set a high bond, I was worried

that my family would have to choose between my bond or my sister-in-law's medical care.

9. In October 2012, I received notice that I would get a bond hearing due to the *Rodriguez* case. At that point I had been detained over three years in immigration detention. I decided I would try to ask the judge to release me on a low bond because I could not stand to be in detention any longer, but I did not want to give up my immigration case and the chance to stay here with my family.

10. In approximately late October 2012, I had my *Rodriguez* bond hearing and the judge ordered me released on a $2,500 bond. I was released several weeks later in November 2012. I spent a total of three years and 4 months in detention. I am now living with my sister. I am very thankful to be able to be able to continue fighting my case outside of detention.

11. During my time in detention, I was detained in Mira Loma for approximately a little more than 2 years and detained in Adelanto for approximately a little more than one year.

12. At Mira Loma, I would frequently visit the law library to work on my case. Due to the limitation and access of legal material I purchase my own legal books and then I gradually learned a lot about the immigration process. However, most of the detainees I met in Mira Loma understood very little about their cases and the immigration process. Many did not have attorneys, speak or read English, or understand the steps for applying for relief, bond or for appeals. During my time in Mira Loma, I helped many people

research their cases because I had learned a lot of about the immigration process, the legal materials available at Mira Loma, and because I could read and write English fluently. In total, over the course of my time in at Mira Loma, I would estimate that I informally assisted more than 500 people with their immigration cases.

13. At Adelanto, I also informally assisted many detainees with their cases. I worked at two law libraries during my time in Adelanto. For the approximately first six or seven months I was detained, I worked at the law library in Building 1. After that, I was moved to a different housing unit, and worked at the law library in Building 2. I worked at the law library in Building 2 for approximately seven to eight months. Because of my work in the law library, I had frequent contact with detainees who were attempting to use the library materials.

14. The law library in Building 1 was open from 8 AM to 4 PM, Monday through Friday. The law library consisted of eight computer terminals. There were no paper books or materials available in the law library. Each of the computer terminals had a LEXIS program that contained some legal materials.

15. Approximately 300 detainees had access to the law library in Building 1. If a detainee wanted to use the law library, he had to sign a schedule that had 1-hour periods. Each hour, the law librarian would pick up the people assigned for the hour and take them to the law library. Because it usually took time to return the detainees to their housing units and pick up the new detainees, detainees would only be able to use

the computer terminals on average for 25-30 minutes of the hour period. Each detainee was permitted only one hour per day at the law library.

16. The law library in Building 2 was open from 8 AM to 4 PM, Monday through Friday. The law library consisted of six computer terminals. There were some paper books available in Building 2, but they were mostly fiction novels. I do not believe there were any paper legal materials available.

17. Approximately 300 detainees had access to the law library in Building 2. Access for the law library in Building 2 was different than in Building 1. Detainees were permitted to use the law library for 2 hours each day. In addition, because the law library adjoined the housing units, the law librarian did not need to escort detainees to and from the library.

18. The only way to access legal materials at the computer terminals in the law library was through LEXIS. During my time in Adelanto, there were often problems accessing the legal materials on the LEXIS program. On three occasions, the facility did not renew the subscription and login information for the LEXIS program, and the program was completely inaccessible until the subscription was renewed. I would notify the person in charge of the law library when the program did not work, but it would usually take a significant amount of time to fix it. The first two times this occurred, we had no access to the LEXIS program for approximately two weeks. The last time this occurred, in approximately September-October 2012, we had no access to the LEXIS program for between one to two months. During these times,

we had no access to any legal materials in the law libraries, apart from our own files and notes.

19. One of the legal materials available on the LEXIS program is the Immigration Court Practice Manual. The document contains information about the immigration court process, and has sample forms. On occasion, I would review the Manual when helping people to find legal materials relevant to their cases. In my experience, detainees found the Manual difficult to understand because it contained a lot of legal terminology. For that reason, I would usually rely on notes and forms I had previously collected, rather than the Manual, when helping people to find forms and legal materials relevant to their cases.

20. During my time in detention, I regularly met detainees who had appealed their cases to the Ninth Circuit. Many of the detainees did not realize that they could request a *Casas* hearing and ask to be released on bond. I would estimate that I spoke to dozens of people who did not know they could request a *Casas* hearing. Some reported not receiving any notice of a *Casas* custody determination from ICE. Some others reported receiving a notice, but did not understand that they could request a *Casas* hearing in immigration court.

21. Of the people who did not realize they could request a *Casas* hearing, many already had been detained for a significant period of time after they had filed their Ninth Circuit appeal. Several had been detained for at least 3-4 months, and a couple had been detained for more than a year after they filed their petitions for review and stays of removal. After I told

them that they could request a *Casas* hearing, I explained how they could file a motion for a *Casas* hearing if they wanted to request one. I also explained how they could prepare for the bond hearing, including by gathering documents and identifying witnesses. Several of the people I assisted were granted a *Casas* bond and released.

22. I feel fortunate that I could assist the other detainees as a law librarian because of my fluency in English, my education, and my ability to read and understand the legal materials. Most of the other detainees I met struggled to understand and represent themselves in immigration court. I would estimate that I had contact with many hundreds of individuals during my time in immigration detention. Of the individuals I encountered, I would estimate that most were not proficient in English, and many were not literate in any language.

23. In my experience, detainees in Adelanto received notices from the immigration court through the mail, and not by hand delivery.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 7th day of Feb., 2013 in the city of Van Nuys, California.

/s/ BYRON MERIDA
BYRON MERIDA

Declaration of Caitlin Patler

I, Dr. Caitlin Patler, hereby declare:

1. I am a University of California President's Postdoctoral Fellow in the UC Irvine Department of Criminology, Law and Society. I received my Ph.D. in Sociology from UCLA in 2014, where I was a National Science Foundation Graduate Research Fellow, a Ford Foundation Diversity Fellow, and a UCLA Center for the Study of Women Paula Stone Legal Research Fellow. I received my M.A. in Sociology at UCLA in 2009, and my B.A. with College Honors, Magna Cum Laude, in Sociology and Chicana/o Studies from UCLA in 2003.

2. I have extensive training, expertise, and experience in quantitative analysis and methodology, having completed courses in survey research methodology, statistics, and advanced quantitative data analysis.

3. Petitioners' counsel gave me a true and correct set of reports and spreadsheets that the Government filed as part of its compliance reporting in *Rodriguez v. Robbins*. The status reports and supporting spreadsheets were filed on November 4, 2013, January 28, 2014, Februrary 7, 2014, April 4, 2014, April 28, 2014, May 15, 2014, July 28, 2014, and September 15, 2014. These reports are reflected on the district court docket as Dkt. 377, 405, 408, 411, 412, 417, 420, 422 and 429. Attached here to as Exhibit A are true and correct copies of these status reports and spreadsheets.

4. I have summarized the data contained in the spreadsheets accompanying the first three status reports that were filed on on November 4, 2013

("13-11-04 Spreadsheet 01—Accompanying Status Report 01"), January 28, 2014 ("14-01-28 Spreadsheet 02—Accompanying Status Report 02"), Feburary 7, 2014 ("14-02-07 Spreadsheet 02—SUPPLEMENTAL —Accompanying Status Report 02"), and April 28, 2014 ("14-04-28 Spreadsheet 03—Accompanying Status Report 03" and "14-04-28 ACLU Identified Missing SS Entries 4_28_2013"). I conducted the summaries without performing any techniques that require advanced statistical training or understanding, using just simple mathematical formulas (such as addition or averaging). Attached hereto as Exhibit B is a true and correct copy of tables containing the summarized data.

5. The government status reports include data on approximately 2,068 individuals who were scheduled for a bond hearing under the preliminary and permanent injunctions, and provides data on the outcome of 1,680 bond hearings where bond was either granted (in some amount) or denied.

6. The government's status reports also include data on the outcomes of approximately 270 bond appeals filed by immigration detainees. Exhibit B groups these 270 appeals into three groups: (a) instances where an appeal was remanded for further proceedings; (b) instances where an appeal was labeled as "dismissed," "affirm decision," "summary affirmance," "sustain," or "dismiss appeal/affirm IJ decision";[1] and (c) instances where an appeal was labeled as "withdrawn/appeal withdrawn," "lacks jurisdiction," "moot bond," "pending" or "other."

---

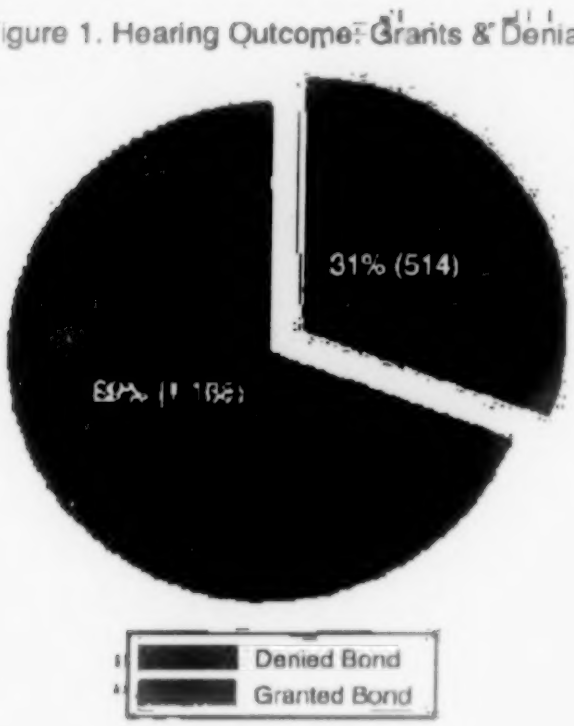
[1] "IJ" is used as an abbreviation for Immigration Judge.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed this 22st day of Sept., 2014, in Los Angeles, California.

/s/ CAITLIN PATLER
CAITLIN PATLER

Exhibit B

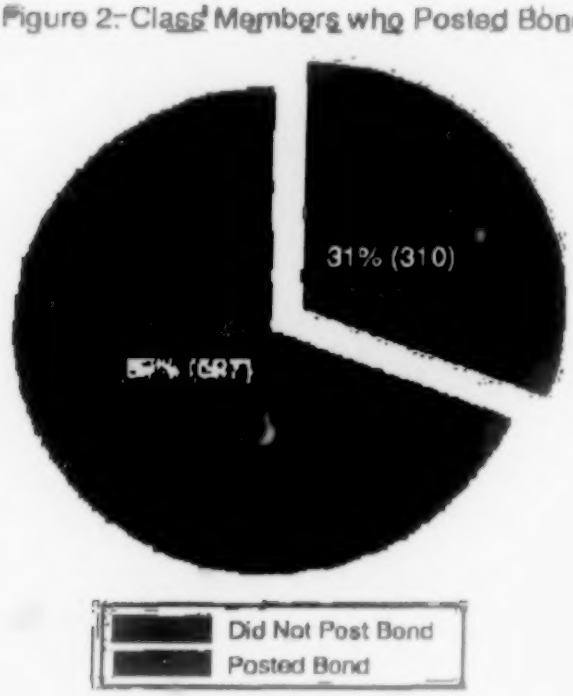
FIGURE 1. Outcome of Bond Hearings[1,2]



[1] All the data reported herein was drawn from three status reports filed by the government in *Rodriguez*. The status reports include data on bond hearings conducted from October 2012 to April 2014.

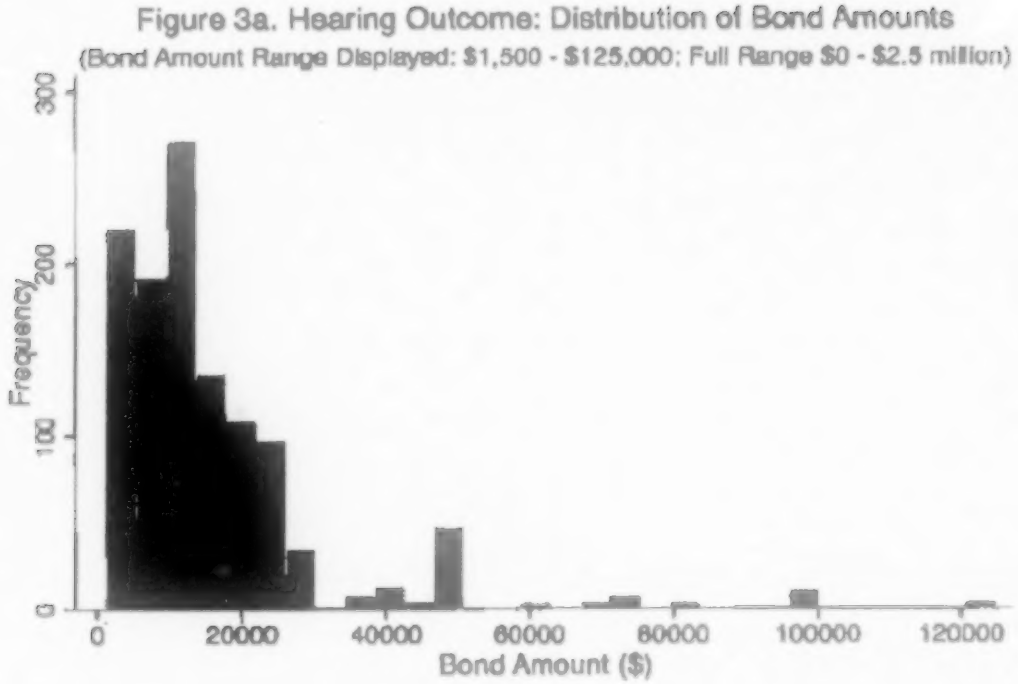
[2] Figure 1 summarized data on bond hearing in which the class member was ordered released on bond (in some amount) or other conditions of release, or denied release on bond. The chart "continued/rescheduled" or "no action—released."

FIGURE 2, Class Members Who Posted Bond[3]



[3] The government status reports do not report posting data for all class members ordered released on bond. Accordingly, the total number of class members in this chart is less than the number reported granted bond in Figure 1.

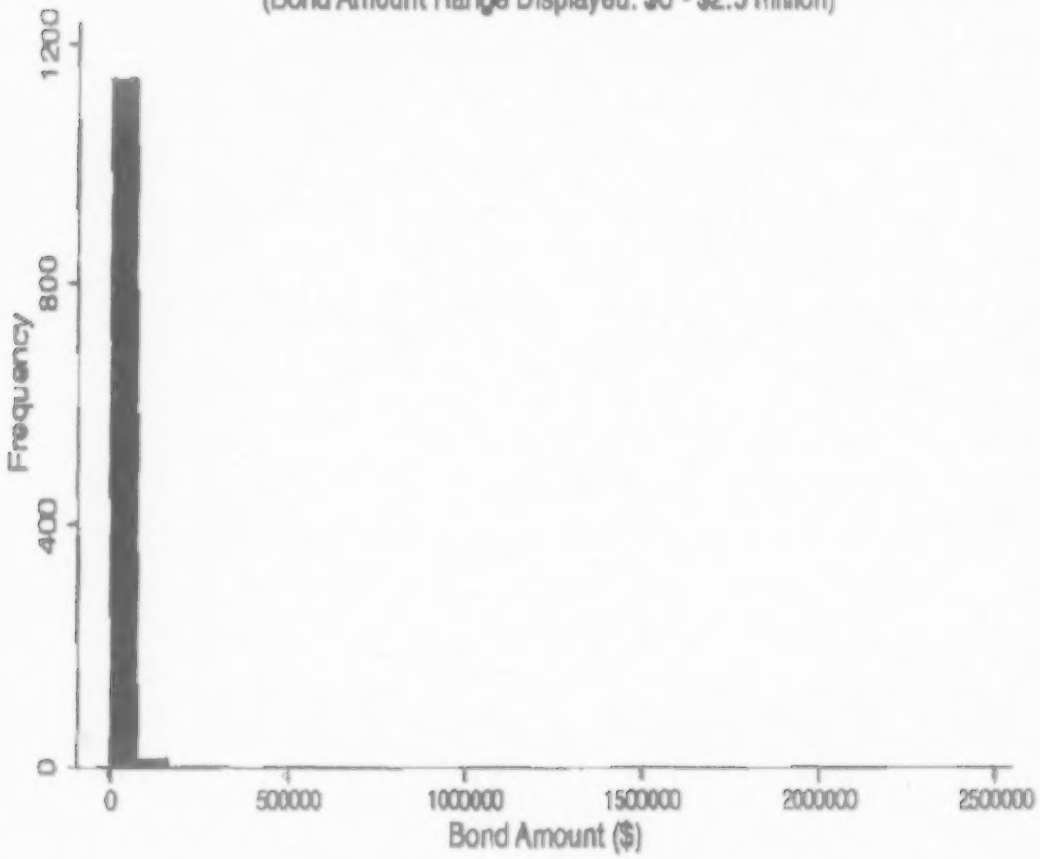
FIGURES 3a and 3b. Bond Amounts[4]



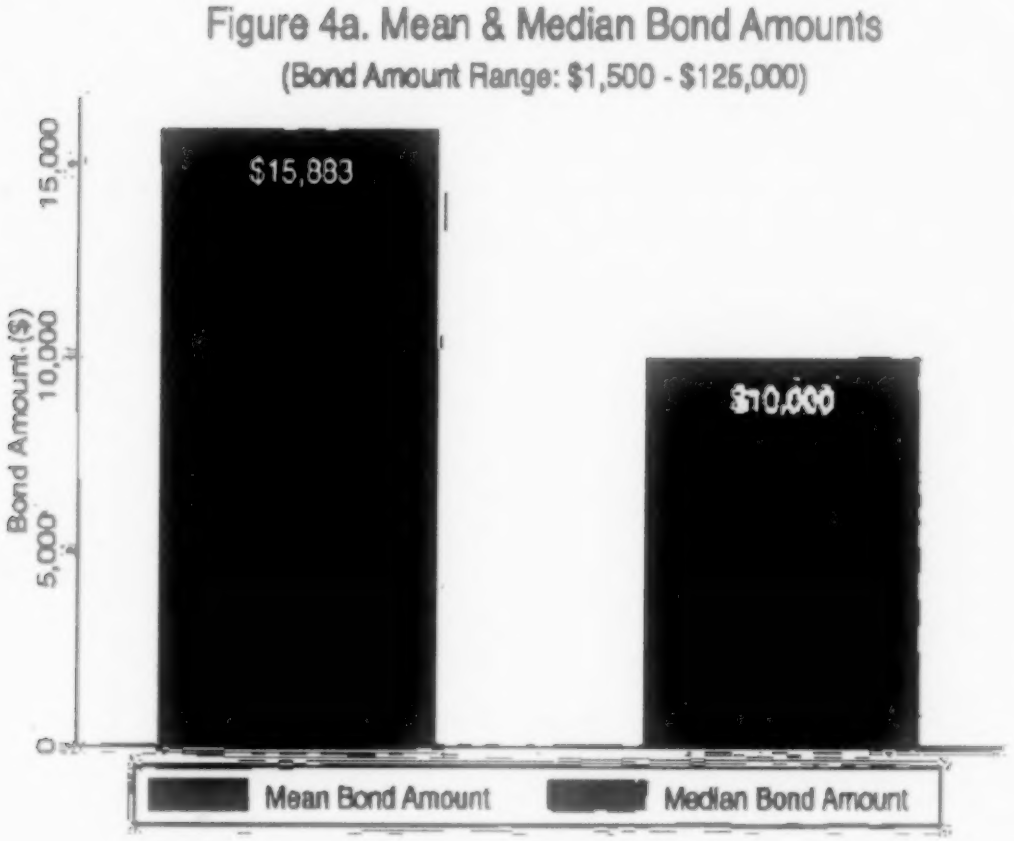
[4] Figures 3a and 3b present the distribution of bond amounts ordered for class members. Figure 3b includes the full range of bond amounts from $0 to $2,500,000, whereas Figure 3a is limited to bond amounts between $1,500 and $125,000. Figure 3a omits approximately 18 bond hearings (8 in which the amount of bond set was $0, and 10 in which the amount was greater than $125,000). Because Figure 3a is limited to a narrower range, it presents a more detailed distribution of bond amounts than does Figure 3b, which includes the full range.

Figure 3B. Hearing Outcome: Distribution of Bond Amounts

(Bond Amount Range Displayed: $0 - $2.5 million)



FIGURES 4a and 4b. Mean and Median Bond Amounts[5]



[5] Figures 4a and 4b present the mean and median bond amounts for class members corresponding to the figures reported in Figures 3a and 3b. Because Figure 3b includes the full range of bond amounts from $0 to $2,500,000, Figure 4b includes mean and median bond amounts using the whole range. Because Figure 3a is limited to bond amounts between $1,500 and $125,000, Figure 4a reports the mean and median bond amounts for bonds set within those ranges. The mean bond amount reported in Figure 4b is significantly higher than in Figure 4a because of the inclusion of the approximately 10 class members who received bond amounts in excess of $125,000.

Figure 4B. Mean & Median Bond Amounts

(Bond Amount Range: $0 - $2,500,000)

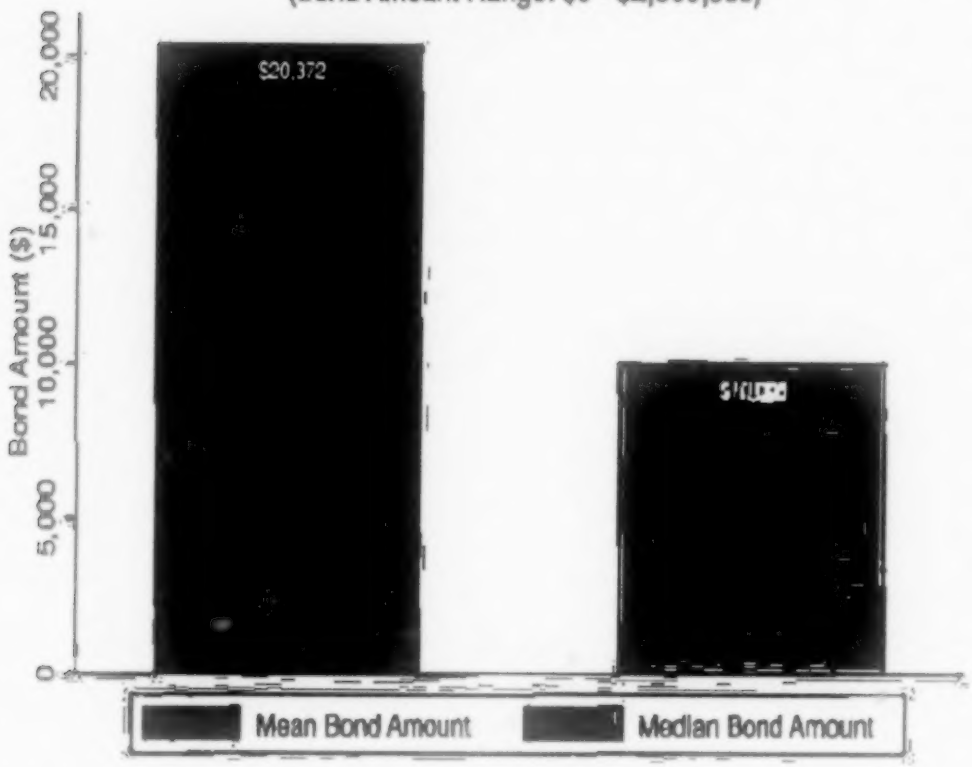
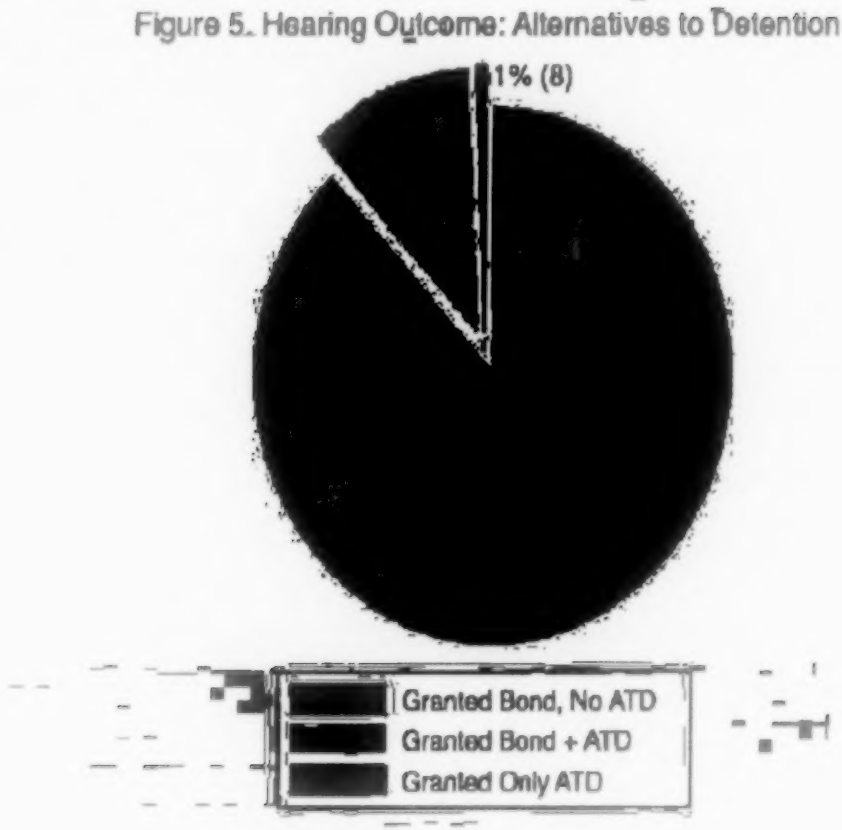
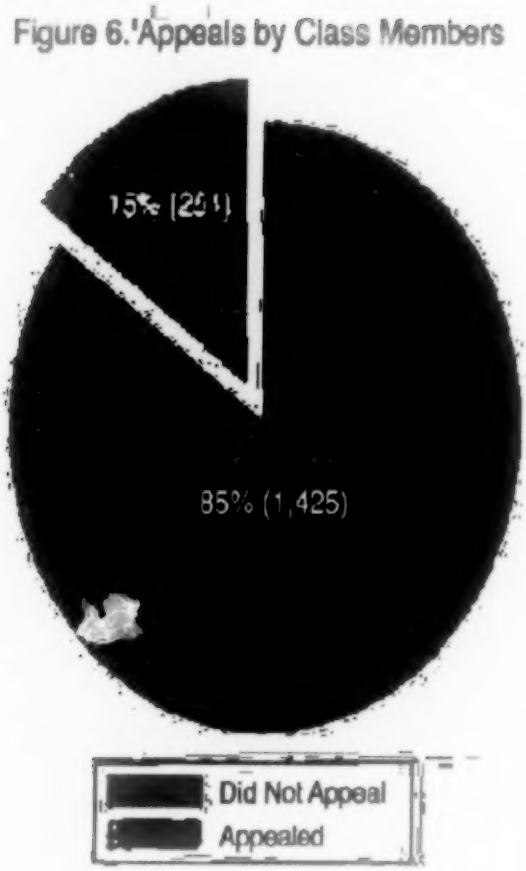


FIGURE 5. Alternatives to Detention[6]



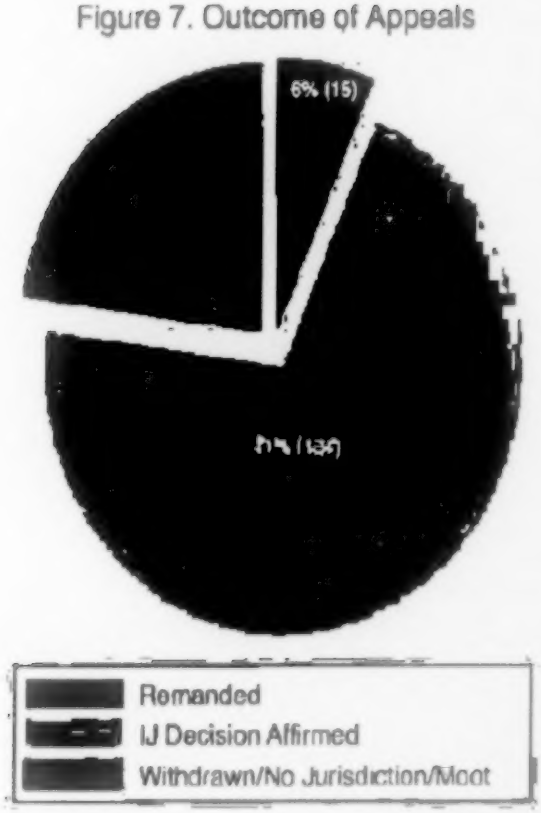
[6] "Alternatives to Detention" refers to conditions of release besides bond, such as electronic monitoring.

FIGURE 6. Appeals Taken[7]



[7] Figure 6 presents data on appeals taken by class members. According to the government's status reports, the government only produced information on appeals taken by class members. Therefore, this table summarizes no data on appeals taken by the government.

Figure 7. Appeals Outcomes[8]



[8] Figure 7 presents the outcomes of appeals taken by class members. The category "Remanded" refers to cases in which the outcomes was reported as "remanded" The category "IJ Decision Affirmed" includes cases in which the outcome was reported as "dismissed," "affirm decision," "summary affirmance," "sustain," or "dismiss appeal/affirm IJ decision." The category "Withdrawn/No Jurisdiction/Moot" includes cases in which the outcome was reported as "withdrawn/appeal withdrawn," "lacks jurisdiction," "moot bond," "pending" or "other."

Declaration of Alejandro Rodriguez

I, Alejandro Rodriguez, hereby declare:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

2. I was born on **[REDACTED]** 1978 in Juarez, Mexico. In 1979, at the age of 1, my parents brought me to the United States, and I have lived here ever since.

3. I grew up and received all of my education entirely in the United States, and I consider myself an American. My father became a naturalized United States citizen on September 17, 1986 and my mother is a Lawful Permanent Resident. I became a Lawful Permanent Resident on June 4, 1987. My brother is also a Lawful Permanent Resident and my younger sister was born here in the United States. I have 3 U.S. citizen children: my son **[REDACTED]** is 11 years old; my other son **[REDACTED]** is 5 ½ years old, and my daughter **[REDACTED]** is 2 ½ years old. Before my immigration troubles, I had a good job working as a dental assistant.

4. I have made some mistakes in my life. In 1998, when I was 20 years old, I was caught driving a stolen car. On July 29, 1998, I pled guilty to a violation of California Vehicle Code 10851(A) and was sentenced to 6 months, with 3 years of probation. In 2001, with just a few months left, I was found to be in violation of my probation and was sentenced to 2 years, of which I served 10 months.

5. In 2003, when I was about 24, I began to get involved with drugs. In October 2003, I pled no contest to and was convicted of Possession of a Controlled Substance, California Health & Safety Code 11377(a), for which I received 5 years of probation under California Prop 36, requiring me to take a course for drug rehabilitation. I no longer take or even associate myself with drugs, and I deeply regret ever being involved in the first place.

6. Before I had a chance to finish my drug classes under Proposition 36, I was turned over to ICE custody, on or about April 10, 2004. I was moved to the San Pedro Processing Center five days later, on or about April 15, 2004. At that time, an ICE officer told me that I could get out on $15,000 bond. However, I did not have that much money and could not pay it at that time. I have been detained ever since then—a time period of over three years.

7. At my hearing in June 2004, I believed the judge was going to grant me release because I was eligible for cancellation of removal. However, the government attorney then brought up my charges from 1998. The government also submitted evidence that, in October 2003, I was convicted of being under the influence of a controlled substance in violation of Health and Safety Code section 11550(a), for which the sentence was 120 days.

8. The judge decided in July 2004 that I was not eligible for cancellation because she said that my theft conviction was an aggravated felony, and she ordered me deported to Mexico. I was confused and did not know what to do. I could not comprehend how I could

be sent to live in a country I did not know, where I had not lived since I was one year old.

9. I appealed my case to the BIA, but in December 2004 I lost. The BIA agreed I was an aggravated felon and ineligible for cancellation. Although I was beginning to become depressed about my ongoing detention, I appealed my case to the Ninth Circuit because the only other option would be to accept deportation to a country I have never known. I honestly believe that my crime is not an aggravated felony, and I decided to fight so I could stay in my home country and be near my children and family.

10. My case has been pending at the Ninth Circuit for a long time because the government kept asking to hold my case in abeyance until the Supreme Court decided a similar case. After more than two years during which I waited in detention, the Supreme Court made its decision around February 2007. But from what my lawyer told me, the Court did not decide the main issue in my case, which is whether a joyriding violation of Cal. Vehicle Code 10851 is a theft offense under the immigration laws. Now I have to appeal once again to the Ninth Circuit, which I understand could add another year or more to my detention.

11. On March 10, 2005 an officer handed me a piece of paper and told me that I was going to stay in detention until I was removed. I figured out that this was called a custody determination, and I have become very familiar with these in my 3 years in detention. Before this custody determination, I had been given a questionnaire which asked about my family, my previous employment, and my address. I filled it out,

explaining that I had family in the area, that I could live with my mother if released, and that I had held a job as a dental assistant. I really felt that this would be enough to allow me to be released. Unfortunately, my paper determination informed me that I would remain detained until the Ninth Circuit decides my case. I wish it had told me what else I could prove in order to be released, as I desperately just wanted to see my family, especially my new baby girl, who had just been born while I was in ICE detention.

12. I received 3 more custody determinations during my detention. In September 2005 and March 2006, I was told verbally that I would remain detained because I was a flight risk, but I was not given any papers regarding these custody determinations. In March 2007, I received my fourth custody determination, which was given to me in writing like my first one. Aside from the different dates on them, they were so similar that they seemed like carbon copies of each other. I was never given another questionnaire to fill out, and I was never interviewed in relation to any of my custody determinations. The last one, in March 2007, also claimed that my removal was imminent. But I know this is not true, because my case has been set for more briefing in the Ninth Circuit, in light of a recent Supreme Court case.

13. I have learned a lot during the years since those convictions. I have already missed my baby daughter's first smile, her first words, and her first steps. I am fighting my case so hard because I am fighting to stay in her life. I can not imagine being forced to live in a country I do not know, deported from my homeland, and unable to see my children grow up.

I know that I have made mistakes in the past, but I will never do anything to separate me from my loved ones again. I am desperate to be released from detention so I can be a part of my family's lives again. If given another opportunity, I know I will make better decisions.

14. During my years in detention, I have seen at least dozens of other people who had been held for more than six months. Many of them were held for years like me. Based on my conversations with these men, I know that many of them never got bond hearings, while others got hearings at the beginning of their detention, but not afterwards.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed this 10th day of May, 2007 in Los Angeles, California.

/s/ ALEJANDRO RODRIGUEZ
ALEJANDRO RODRIGUEZ

Dated: 5-10-07

Declaration of Alejandro Rodriguez

I, Alejandro Rodriguez, hereby declare:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

2. On July 27, 2007, I was released under an order of supervision from San Pedro Service Processing Center in San Pedro, California, after more than three years and three months in detention.

3. As one of the conditions of my release, I am required to wear an electronic ankle monitor at all times, so that immigration authorities can always be aware of my location. In addition, I am required to be within 50 feet of my home address between the hours of 7 p.m. and 7 a.m. I was informed of these conditions verbally by the officers who released me, and I was also given paperwork which confirms these conditions.

4. Because of these restrictions, I must spend every night at my mother's house, which is the address I listed with immigration authorities as my home address. I listed her house, as opposed to my father's or girlfriend's, because hers was the only home that immediately had an available phone line, which was necessary to support the technology of the electronic ankle monitor. I am relieved to be spending my nights outside the detention center, in my own bed in my own room at my mother's house, but I regret that I am unable to spend any evenings with my father, who had been so supportive of me during my time in detention. I also regret that I can not tuck my children

into their own beds, because I have to report back to my mother's house by 7 p.m. every day.

5. While I am grateful that immigration authorities finally chose to conditionally release me from San Pedro Processing Center, I would have strongly preferred a hearing before an Immigration Judge, where I could have demonstrated that I am not a danger to society nor a flight risk. With such a hearing, I would hope to convince the judge that I deserve more lenient conditions of release, which would allow me to spend more time with my family. I have already lost over three years with them, and I am anxious to spend as much time with them as possible to make up for this lost time.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed this 13th day of Aug., 2007 in Los Angeles, California.

/s/ ALEJANDRO RODRIGUEZ
ALEJANDRO RODRIGUEZ

Alejandro Rodriguez Order of Supervision

A 41-551-486

C

*** CONFIDENTIAL PARTICIPANT INFORMATION ***

WEB ENROLLMENT FORM

ELECTRONIC MONITORING SYSTEMS, INC.

Participant's Name	Agency Name
RODRIGUEZ MORALES, ALEJANDRO	ICE-LOS ANGELES
Street Address	**Officer Name**
6143 EASTON AVE	[illegible] Sifuentes
City, State Zip Code	**Time Zone** / **Web Enroll Date** / **Web Enroll Time**
LOS ANGELES, CA 90022	07/26/2007 17:44

Authorized Telephone Numbers	
Phone Number	**Phone Type**
(323) 887-3537	Home

☐ ☒ ☐ ☐

Watch Serial	MAU Serial
42722	44989
Quiet Period Length	**Start of Quiet Period**
24	0000

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Leave	0700	0700	0700	0700	0700	0700	0700
Return	1900	1900	1900	1900	1900	1900	1900
Leave							
Return							
Leave							
Return							

No Leaves Will Be Authorized Unless Specified in the Table Above

www.uscis.gov

I-765

(C18)

*** CONFIDENTIAL PARTICIPANT INFORMATION ***

15720 Frailey

Compton 90221

632-5464

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Order of Supervision

File No: A41 551 486
Date: July 27, 2007

Name: RODRIGUEZ-Morales, Alejandro

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On 12/21/2004 (Date of final order) you were ordered

- ☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997
- ☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

because ICE has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- ☒ That you appear in person at the time and place specified, upon each and every request of ICE, for identification and for deportation or removal.
- ☐ That upon request of ICE, you appear for medical or psychiatric examination at the expense of the United States Government
- ☒ That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as ICE considers appropriate.
- ☒ That you do not travel outside CALIFORNIA (Specify geographic limits, if any) for more than 48 hours without first having notified this ICE office of the dates and places of such proposed travel.
- ☒ That you furnish written notice to this ICE office of any change of residence or employment within 48 hours of such change.
- ☒ That you report in person, on ~~Second & fourth of every month~~ Beginning 8-15-07, to the ICE office at:
  300 N. Los Angeles St., Rm 2204, L.A. CA 90012, unless you are granted written permission to report on another date.
- ☒ That you assist U.S. Immigration and Customs Enforcement in obtaining any necessary travel documents.
- ☒ Other: You shall obey all local, state and federal laws.
- ☒ See attached sheet containing other specified conditions (If continued on separate sheet if required)

Ofcr. Sifuentes
213-830-7981

James Hayes (for)
(Signature of ICE official)

James T. Hayes, Jr., Field Office Director
(Print name and title of ICE official)

Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

Exhibit 9
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(Signature of ICE official serving order) (Signature of alien) 7/27/07 (Date)

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Continuation Page for Form: I-220B

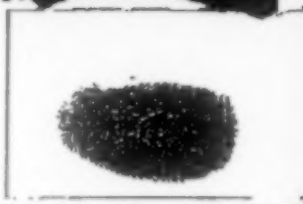
Alien's Name	File Number	Date
RODRIGUEZ-Morales, Alejandro	A41 551 486	July 27, 2007

Alien's Signature

Alien's Address

6193 Euston St
Los Angeles Ca
90022
323-881-3537

Alien's Telephone Number (if any)



PERSONAL REPORT RECORD

DATE	OFFICER	COMMENT/CHANGES

Signature

Title
DEPORTATION OFFICER

Exhibit 5
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U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Order of Supervision

File No A41 551 486
Date: July 27, 2007

Name: RODRIGUEZ-Morales, Alejandro

☒ That you do not associate with criminals or members of a gang that is known to be involved in criminal activity.

☐ That you register in a substance abuse program within 14 days and provide Immigration and Customs Enforcement (ICE) with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.

☐ That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, the duration and objectives of the program, and the name of a program counselor.

☐ That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency/agencies and provide ICE with written proof of such registration within 10 days.

☒ That you do not commit any crimes or be associated with any criminal activity while on this Order of Supervision.

☐ That you report to a parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.

☒ You must follow all reporting and supervision requirements as mandated by the parole or probation officer.

☐ That you continue to follow any prescribed doctor's orders whether medical or psychological, including taking prescribed medications.

☐ That you make good faith and timely efforts to obtain a travel document and assist ICE in obtaining a travel document.

☐ That you submit a complete application for a travel document to all appropriate Embassies or Consulates, including those representing the countries of Mexico. You must present ICE with evidence that each Embassy or Consulate to which you apply has received your request and all required documents. This may be done, for example, by mailing your application(s) with a request for return receipt and providing the signed return receipt to ICE, by obtaining a tracking number when you mail your application(s) and providing the number to ICE, or by submitting written confirmation of receipt issued by the Embassy or Consulate.

☐ That you submit your application(s) for a travel document to all appropriate Embassies or Consulates and provide proof of receipt to ICE on or before _____.

☐ That you provide ICE a copy of your application(s) for a travel document that you submit to any Embassy or Consulate, including all supporting documents, photos, and other items provided to the Embassy or Consulate to support your application(s).

☐ That you provide ICE a copy of all correspondence related to your travel document application(s) that you

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send to, or receive from, an Embassy or Consulate.

☐ That you contact the Embassy or Consulate within 21 calendar days of making your application(s) to confirm that the information you provided is sufficient.

☐ That you comply with any requests from an Embassy or Consulate for an interview and make good faith efforts to submit further documentation if required by the Embassy or Consulate.

☐ Every time you report in person under this order of supervision, you must inform the local ICE office of all actions you have taken to obtain a travel document. You must provide any available written documentation to ICE regarding these actions and the status of your travel document application(s).

☐ That you provide ICE, upon request, with any and all information relevant to application(s) for a travel document. This may include, but is not limited to, information regarding your family history, including dates of birth, nationalities, addresses, and phone numbers as requested for such persons, whether in your country of nationality and/or citizenship or elsewhere, and your past residences, schools attended, etc.

☒ You will participate in a supervised release program, as described in the attached document. You will comply with the rules and requirements of this program, and cooperate with its administrators.

I agree to comply with the rules, requirements, and administrators in the supervised release program described in the attached document.

Alien's signature X [signature] Date 1/27/07

☐ Other. _____

Any violation of any of the above conditions may result in a fine, more restrictive release conditions, return to detention, criminal prosecution, and/or revocation of your employment authorization document.

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order and addendum, a copy of which has been given to me. I understand that failure to comply with the terms of this order and addendum may subject me to a fine, more restrictive release conditions, detention, criminal prosecution, and/or revocation of my employment authorization document.

[signature] [signature] 1/27/07

(Signature of ICE official serving order) (Signature of alien) (Date)

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE).

Updated 4/25/2005

Exhibit 9
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Declaration of Abel Perez Ruelas

I, Abel Perez Ruelas, hereby declare:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so completely as follows:

2. I was born on [**REDACTED**] 1967 in Jalisco, Mexico. I was admitted to the United States in 2002 on a visitor's visa.

3. In 1996, I began a relationship with Maria del Rosario and we had a daughter, [**REDACTED**], one year later. In 2000, we broke up and I lost contact with Ms. del Rosario. In 2007, my mother informed me that Ms. del Rosario had died in childbirth and my daughter was living with her mother's parents. It is my great hope that someday I can bring my daughter to live with me in the United States.

4. On December 22, 2008, I married Maria Yolanda Perez Navichoque, a United States citizen. She works as a nurse at the Los Angeles Jewish Home, a non-profit senior living facility in Reseda, California. In February 2009, we filed to adjust my immigration status to a lawful permanent resident based on our marriage.

5. After marrying Ms. Perez, I became a stepfather to her four children, who are all United States citizens. The two youngest children live with me and my wife in our home in Reseda, California.

6. During the eight years I have lived in the United States, I have worked in construction jobs involving cement and tile work. Prior to my immi-

gration troubles, I regularly attended church with my wife in Pacoima and Reseda.

7. I have made some mistakes in the last few years that I greatly regret. I have been convicted of driving under the influence on three occasions. I served three months of probation for the first offense in 1994, served 15 days in jail for the second offense in 2004, and served 60 days in jail for the third offense four years later. I know that I foolishly put myself and others at risk by driving under the influence and I deeply regret my decision to abuse alcohol.

8. After completing my sentence for my last conviction, I have diligently attended Alcoholics Anonymous meetings for over a year and have continued attending AA meetings while in immigration detention to further my rehabilitation. I am determined not to repeat my mistakes.

9. When I was released from jail on approximately April 8, 2009, ICE immediately took me into immigration custody even though I was in the process of adjusting my status to become a lawful permanent resident, and even though DUI is not a removable offense. For the past 18 months, I have been held in ICE custody at Mira Loma Detention Center. My attorneys tell me that I am being held under 8 U.S.C. 1226(a).

10. On April 21, 2009, I was given a bond hearing where I bore the burden of proving that I was not a danger to the community or a flight risk. The judge denied my bond, finding that I was a danger to society based on my prior DUI convictions, even though the immigration judge knew I was married to a United

States citizen and had a pending application to adjust my status to become a lawful permanent resident.

11. With the help of an attorney I applied for a bond reduction in February 2010. At the hearing the immigration judge set bond at $5,000, an amount too high for my family to pay, especially given that I am in detention and not available to work to support my family. Because of my inability to pay, I have remained in immigration detention for 18 months while waiting adjudication of my case. My last hearing was on approximately September 2, 2010. At the hearing, my attorney informed the judge that my application to adjust status had been granted, and presented letters from my family and my tax records. But the judge refused to reduce my bond, based on my prior DUI convictions. My next hearing is scheduled for December 3, 2010.

12. On July 30, 2010, my wife and I received news that my application to adjust my status had been approved, with a priority date of March 22, 2009. I am overjoyed that I will be able to remain in the United States as a permanent resident with my family. However, even though I am able to adjust my status immediately, I remain in ICE detention because the immigration judge set a high bond, which my family still cannot afford to pay. I don't understand why ICE continues to hold me even though my application to adjust has been granted.

13. It has been very difficult to be separated from my wife and my step-children for so long. My detention has been a tremendous burden on my family, who depend on me to support them. I miss being with my

family and I am anxiously waiting to be re-united with them. I also have found it difficult to stay in touch with my attorney to fight my removal case while at Mira Loma. I am very thankful that my application to adjust status has been granted, even with all the difficulties I have faced in detention.

14. While at Mira Loma, I have learned that there are many other people like me who are held in detention for long periods of time even though they don't present a flight risk or danger, and have strong claims to remain in the United States. I don't think it is right for ICE to hold people for long periods without giving them a hearing where ICE has to justify the detention.

15. I understand that I am a named plaintiff in this class action lawsuit and I understand my responsibilities. I have spoken with my attorneys about my role, and know that I need to stay informed with what is happening in the case and to make decisions that are in the best interests of the class as a whole. I am prepared to fulfill these duties and represent the class.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed this 12th day of Oct., 2010 in Lancaster, California.

/s/ ABEL PEREZ RUELAS
ABEL PEREZ RUELAS
A# 095-788-558

Declaration of Michael Tan (excerpts)

Summary of A Files for Class Members Not Including the 1225(b) Subclass

15. We first analyzed the A files of class members without including the A files of members of the 1225(b) Subclass. A files were determined to be associated with a person in the 1225(b) Subclass using the methodology described in the concurrently-filed Declaration of Michael Kaufman ¶¶ 7-11.

16. Based on our review of A files associated with persons in the 1225(b) Subclass, such persons were detained upon their arrival to the United States at a port of entry, almost always after making a request for asylum or expressing fear about returning to their country of origin review. As a result, these files are far less likely to contain information about family ties.

17. Not including members of the 1225(b) Subclass, the A files of in period class members contained the following information:

a. 412 A files contained information indicating whether the class member had a child or children in the United States. Of these, 251 class members had a child or children who resided in the United States.

b. 407 A files contained information indicating whether the class member had a child or children with U.S. citizenship. Of these, 238 class members had a child or children with U.S. Citizenship.

c. 445 A files contained information indicating whether the class member had a spouse who resided in the United States. Of these, 147 class members had a spouse who resided in the United States.

Summary of A Files for Class Members Inclusive of the 1225 Subclass

18. For the purposes of completeness, we also analyzed the A files of all 610 class members. These A files contained the following information:

a. 463 A files contained information indicating whether the class member had a child or children who resided in the United States. Of these, 254 class members had a child or children who resided in the United States.

b. 455 A files contained information indicating whether the class member had a child or children with U.S. citizenship. Of these, 240 class members had a child or children with U.S. Citizenship.

c. 498 A files contained information indicating whether the class member had a spouse who resided in the United States. Of these, 150 class members had a spouse who resided in the United States.

Summary of A Files for Class Members Within the 1226(c) Subclass

19. We also separately analyzed the A files of those persons within the 1226(c) Subclass. A files were determined to be associated with a person within the 1226(c) Subclass using the methodology described in the concurrently-filed Declaration of Michael Kaufman ¶¶ 12-18.

20. The A files contained the following information:

a. 211 A files contained information indicating whether the class member had a child or children who resided in the United States. Of these, 138 class

members had a child or children who resided in the United States.

b. 210 A files contained information indicating whether the class member had a child or children with U.S. citizenship. Of these, 130 class members had a child or children with U.S. Citizenship.

c. 215 A files contained information indicating whether the class member had a spouse who resided in the United States. Of these, 77 class members had a spouse who resided in the United States.

c. 66 had resided in the United States for 20 years or more prior to detention.

Length of Residence for All Class Members

30. For purposes of completeness, we also analyzed length of residence for all class members, inclusive of the Section 1225 subclass. ICE-EDI-010 contained sufficient information for us to calculate the length of residence for 314 class members. ICE-EDI-010 contained information stating that:

a. 192 had resided in the United States for at least 5 years prior to detention;

b. 141 had resided in the United States for at least 10 years prior to detention; and

c. 66 had resided in the United States for 20 years or more prior to detention.

Length of Residence for Members of the 236(c) Subclass

31. Using the methods referenced above, we also analyzed length of residence for members of the Sec-

tion 1226(c) subclass. ICE-EDI-010 contained sufficient information for us to calculate the length of residence for 107 class members. ICE-EDI-010 contained information stating that:

a. 88 had resided in the United States for at least 5 years prior to detention;

b. 67 had resided in the United States for at least 10 years prior to detention; and

c. 37 had resided in the United States for 20 years or more prior to detention.

Age of Class Members At the Time of Entry Into the United States

32. I also supervised legal support staff to calculate class members' age at the time of the date provided in "Entry Date" field using the information provided in the "Birth Date" field. I checked the calculations for a sample of class members in order to ensure their accuracy.

33. Where there were multiple "Entry Dates" for the same class member, we used the earliest date of entry into the country. In many cases, there was no information in the "Entry Date" field. In these cases, we therefore could not determine the class member's age at the time of entry into the country.

34. As with the summaries provided above, we excluded individuals who were likely not class members. Due to technical difficulties, we were unable to isolate the class members who were "in-period" or the class members within the Section 1225 and Section 1226(c) Subclasses. Thus, we could not provide data summaries regarding age along the same lines as the data

summaries provided above. We will submit a supplemental declaration with those summaries once those technical difficulties are resolved.

35. ICE-EDI-010 contains sufficient information to determine the age at the time of entry for 642 individuals included in the spreadsheet. Of those individuals:

a. 325 were 21 years old or younger on the date of entry.

b. 294 were 20 years old or younger on the date of entry.

c. 224 were 19 years old or younger on the date of entry.

d. 191 were 18 years old or younger on the date of entry.

Exhibit F: Deposition of Eric G. Saldana (excerpts)

Los Angeles, California

Friday, January 13, 2012

Volume 1

* * * * *

[9]

A. Yes.

Q. Do you see at the bottom of the page topic number four?

A. Yes.

Q. Are you the person most knowledgeable about this topic at the Department of Homeland Security?

MR. ATKINSON: I'm sorry, could he just take a moment to read the topic?

MR . KAUFMAN: Sure.

THE WITNESS: I've read it and I'm able to speak to this.

BY MR. KAUFMAN:

Q. You are the person most knowledgeable at the Department of Homeland Security on this topic?

A. Yes.

Q. Could you turn to the next page and take a moment to read over what is listed as topic number seven.

A. Yes.

Q. Are you the person most knowledgeable at the Department of Homeland Security on this topic?

A. Yes.

MR. ATKINSON: Just—when we earlier designated Mr. Saldana, it was with regard to topic number seven with respect to the notification provided [10] to persons eligible for such hearings, not with respect to how hearings are conducted, which was the topic, I believe, we designated Judge Wyle for for the Department of Justice.

BY MR. KAUFMAN:

Q. Mr. Saldana, could you please turn what is marked as Page 10 in this document and take a moment to read over topic number ten at the bottom of the page.

A. Yes.

Q. Are you the person most knowledgeable at the Department of Homeland Security on topic number ten?

A. Yes.

Q. Now, finally, please turn to the next page and take a moment to look over topic number eleven.

Are you the person most knowledgeable at the Department of Homeland Security on topic number eleven?

A. Yes.

Q. Great. So, Mr. Saldana, what did you do to prepare for this deposition?

A. In addition to my experience in working with these different aspects that you pointed out earlier, I have prepared with the attorneys that you see present with me today.

* * * * *

[37]

or would not allow them to be released, and for the most part they understand the thought process of the person making that decision. And if there's something outside the norm, they'll usually make that recommendation, give that information to the determining official.

The processing officer does just that, processes the case, prepares the forms, prepares the worksheets, puts the A-File together and gives that to the supervisor, the SDDO, who then reviews everything and then he's the one who does the determination.

Q. So he would make a determination whether someone was subject to mandatory detention, for example?

A. Yes.

Q. Would he also be the person if someone, let's say, released on bond that would make the determination as to whether to release that person and the amount of bond?

A. Yes.

Q. When the SDDO makes those initial determinations, besides the processing agent are there any other ICE officials involved in the decision-making process?

* * * * *

[106]

some type of bond; but that same person comes in and we learn information that maybe there's an issue with a family member, maybe a medical issue with a family member, child is sick, single parent. That's something we want to really push to get them back to his family, so we would consider the ATD option. And ATD, I mean Alternatives to Detention. That's what we would call it.

Q. When ICE officials make that initial custody determination, do they sometimes—is the determination release on a particular ATD program?

A. Based on the documents that I reviewed for this case, there was a lot of mention of multiple ATD programs. Since, I believe it was, November of 2009, the contractors that we use for those programs—I don't think they consolidated, but we chose one. There was multiple contractors that we used previous to that.

That contractor has created something called ISAP-2, so that is the form of Alternatives to Detention that we use. And in reading through some of this material that was submitted to you, I saw that there was mentioned an EMD, electronic monitoring device, and other programs that were part of G4S Corporation that no longer holds the contract with us.

[107]

So if a supervisor decides to do Alternatives to Detention, it's with ISAP program or the B.I. Corpo-

ration. So it's—there's not as many types available to the supervisor to choose from.

Q. So if I understand, there's only one type available now in the L.A. field office, the ISAP-2 program?

A. There's one provider. There's the ISAP-2 program, and in that program there's various levels of supervision that take place. There's three common ones or the three of them are GPS or technology, which is what they sometimes refer to as full service; there's a telephonic T/O, which is—in which the alien is monitored by the contractor and still—and has to do a telephonic call-in system; and there's T/R, which is a system made available that we've contracted with B.I. for but ICE maintains the supervision over and the management of.

Q. Are the SDDOs aware of all these programs, these options?

A. They may not have specific knowledge of each, but every program works a little bit differently. And at the time that SDDO determines to turn someone over to ATD, they don't necessarily choose ATD this or that; it will usually go to an ATD officer who makes

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[111]

ISAP's, but it's an ICE agent or officer actually doing the review of the cases.

BY MR. KAUFMAN:

Q. In your experience has the use of ATDs in the L.A. field office changed the way that officials go about assessing flight risk in that initial determination?

A. I think I could say yes to that.

Q. In what way?

A. It's another option. The concern for anybody who has to set bond or decide whether somebody is going to stay in custody or not is am I making the correct decision, is this person that will be released on his own recognizance, whether it's under a bond or something else, will they come back and re-offend, one; will they come back for their hearing.

I think, although it isn't the case every time, ATD has shown to be more of a positive influence for those individuals taking part in the program. We see a good success rate on that. So therefore I think it makes the supervisors more comfortable to use that program. But then again there are issues that come up where people take advantage of the system, which also puts them back.

Q. When you say success rate, what do you mean [112] by that?

A. Success rate traditionally has been tracked with what they call a compliance rate. And a compliance rate for B.I.—they manage a number of different performances that they consider compliance, whether it has to do with people showing up for interviews, home visits, or whether the alien goes to their court hearing.

It's—I think it's been successful in terms of compliance to get people to their court proceedings. It's a very impressive system.

Earlier this year my specific office in San Bernardino—we had a compliance rate of about 60 percent for people going to their immigration hearing. We had a brainstorming session and thought about existing protocols in the program and how we could use them to better increase that particular number. And by making some changes we are at, if not close to, 100 percent compliance rate for people to go to their immigration court hearing pre-order.

Q. Is that in the San Bernardino area or—

A. That's in the San Bernardino area. And throughout Los Angeles it's probably in the 90th percentile, I would estimate.

MR. ATKINSON: I'm sorry, I'm trying to jump

* * * * *

[134]

BY MR. KAUFMAN:

Q. I see. But your best understanding is it's increased substantially in the last five years?

MR. ATKINSON: Object to the form. Object, outside the scope.

THE WITNESS: I see no reason not to agree with that.

BY MR. KAUFMAN:

Q. When was the most recent increase in availability of placements in the ISAP program?

A. I could not answer that specifically, the numbers that we have. It may vary, but I'm talking, you know, within 20 or 30. And it may be a case where the—my particular office, for example, the cap of available positions in San Bernardino is just over 1100. There may be a case where Los Angeles may need some of those slots and we may in between us move them.

So it's—to my knowledge, the cap across the field office is about 3,000, of which about 1100, maybe 1150, are in San Bernardino. About the same in Los Angeles. And about seven and some change down in Santa Ana. And at any time, because of the amount of personnel, it could change.

So it would be hard for me to—I don't run

* * * * *

[139]

paragraph below number one on Page 1 of the document. The first sentence states, "ATD is not recommended for aliens who pose a minimal flight risk."

From ICE's perspective what constitutes, quote - unquote, a minimal flight risk?

A. It would be somebody who has major ties to the community who may have a question as to removability possibly—and these are the extremes—somebody who is awaiting a benefit. Cases such as that. I think it would also be cases in which we would determine upon

initial determination that they would be released O/R, Order of Recognizance.

Q. If someone is released O/R, are there no conditions placed on their release?

A. Usually there's a condition that they have to report back in the office and they have to, of course, go to their court hearings.

Q. Is eligibility for relief a consideration in determining whether someone is a flight risk?

MR. ATKINSON: Object to the form of the question.

THE WITNESS: As I stated before, it's not necessarily—not always a part of it, not necessarily a major part of the decision, for the custody decision which this is part of. But it can—

* * * * *

[167]

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: Feb. 8, 2012

/s/ IRMA C. HOGAN
IRMA C. HOGAN, CSR 4877

Exhibit G: Telephonic Deposition of Honorable Jack H. Weil (excerpts)

* * * * *

[61]

Central District of California?

A. Yes.

Q. Great. You started to explain how bond hearings—how someone requests a bond hearing or doesn't and how the scheduling of a bond hearing happens. Can you just give me a description of that process, how someone asks for a bond hearing and then how it comes to be scheduled?

A. Yes. The Department of Homeland Security will make a custody determination. The jurisdiction vests with the immigration court over the removal procedure via the filing of the notice to appear.

The notice to appear will include the initial custody determination from the Department of Homeland Security and the indication whether the respondent is or is not requesting redetermination of that.

When that is filed with the Court, the Court clerk will then schedule the hearing based upon what the respondent has indicated, either they do or do not the request a hearing. There is a little bit of variance among the judges in—for efficiency purposes, but it doesn't affect the substantive, as to whether the matter is put onto a separate bond calendar or just an initial hearing that includes both bond and non-bond matters.

* * * * *

[113]

what the alternative possibilities are. So until you—I'm sure you can craft an alternative, but I don't know what those alternatives are. I don't know what is possible, what's legally appropriate, what—so I—

Q. And so when judges conduct bond hearings, is the availability for an alternative to detention program one of the factors to keep in mind when you make the bond decision?

A. When we talk about a bond decision, the judge—DHS makes the initial custody determination. So the immigration judge does not have the authority to order somebody into an ICE-run program.

Q. Is the Immigration Judge's authority limited to ordering release on bond at a bond hearing?

A. No.

Q. Okay. If an Immigration Judge is going to order release, is their authority limited to ordering release on bond?

A. There's a dispute among judges as to whether you can release somebody on their own recognizance, but the statute says a minimum amount of bond is $1500.

Q. Can you maybe describe that dispute in a little more detail? What is that controversy?

MR. LAWRENCE: I object to this as being outside of the scope of the deposition.

* * * * *

Declaration of Stacy Tolchin

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

2. My name is Stacy Tolchin. I am an immigration attorney in private practice in Los Angeles, CA.

3. I graduated from UCLA Law School in 2001. From 2001-2010, I was employed by Van Der Hout, Brigagliano & Nightingale, LLP, where I specialized in complex removal cases in immigration court, appeals before the Board of Immigration Appeals and Administrative Appeals Office, and petitions for review before the U.S. Court of Appeals for the Ninth Circuit. In 2010, I opened my own practice, the Law Offices of Stacy Tolchin, where I continue to practice immigration law.

4. I have litigated a number of cases in federal district court and at the Ninth Circuit, including *Husyev v. Mukasey*, 528 F.3d 1172 (9th Cir. 2008), *Silaya v. Mukasey*, 524 F.3d 1066 (9th Cir. 2008), *Padilla-Padilla v. Gonzales*, 463 F.3d 972 (9th Cir. 2006), and *Singh v. Still*, 470 F. Supp. 2d 1064 (N.D. Cal. 2007). I have received numerous awards and recognitions for my work, including the American Immigration Lawyers Association Jack Wasserman Memorial Award for excellence in the field of litigation in 2009, the American Civil Liberties Union of Southern California Equal Justice Advocacy Award in 2009, and the National Immigration Law Center Annual Award in 2008. In addition, I currently serve on the Advisory Committee for the American Immigration Council and the Board of Directors of the National

Immigration Project of the National Lawyers Guild, and serve on the Rules Committee of the U.S. Court of Appeals for the Ninth Circuit.

5. I regularly represent individuals in immigration bond hearings conducted pursuant to *Casas-Castrillon v. Department of Homeland Security*, 535 F.3d 942 (9th Cir. 2008), *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (*Diouf II*) and the preliminary injunction order in *Rodriguez*. Over the course of my over 11 year career, I conservatively estimate that I have represented 4-7 individuals in *Casas/Diouf* hearings. I conservatively estimate that I have represented 3 individuals in *Rodriguez* PI hearings. I also regularly represent individuals in bond hearings pursuant to 8 U.S.C. 1226(a). Over the course of my career, I conservatively estimate that I have represented 30 individuals in Section 1226(a) hearings.

6. In my cases involving detained clients eligible for hearings under *Cases* or *Diouf II*, the Department of Homeland Security (DHS) did not provide written or verbal notice to the detainees that they were eligible for a *Casas/Diouf* hearing. Instead, once the detainees retained me, I had to affirmatively request such a hearing with the immigration court. I have not had any cases where DHS automatically scheduled *Casas/Diouf* hearings for eligible individuals.

7. In contrast, in my experience representing individuals eligible for *Rodriguez* preliminary injunction hearings, the government has mailed a written notice to me in advance of the hearing. However, in my experience, I have received such notices typically only one day before the hearing. I have found that this

period of notice is insufficient to adequately prepare for a bond hearing, because it can take several days to gather documents, interview potential witnesses, and conduct additional preparations for a bond hearing. In addition, I maintain a heavy caseload and cannot easily reschedule other meetings, hearings, and court deadlines to prepare for a bond hearing on such short notice.

8. Attached hereto as Exhibit A are true and correct examples of two hearing notices for *Rodriguez* preliminary injunction bond hearings pertaining to my clients. One of the notices is postmarked November 6, 2012, yet noticed a bond hearing set for November 8, 2012. The notice was not received by my office until November 7, 2012. The second notice is postmarked October 29, 2012, yet noticed a bond hearing set for October 31, 2012. That notice was not received by my office until October 30, 2012. Based on past experience, I typically receive notices and other documents mailed by the Los Angeles Immigration Court within one to three days after the date on which they are postmarked.

9. I am familiar with immigration court proceedings at the Los Angeles Immigration Court and (prior to its closing) the Mira Loma Immigration Court. In my experience in my own matters, and based on observing other matters, *Casas/Diouf* and *Rodriguez* preliminary injunction hearings typically last approximately 10 minutes, and no more than approximately 15 minutes.

10. In addition, based on my experience representing clients and seeing other cases that occurred before

or after mine in court, *Casas/Diouf* and *Rodriguez* preliminary injunction hearings routinely are conducted by video for detainees held in the following immigration detention facilities: Adelanto Detention Center, Theo Lacy Facility, and James A. Musick Facility. When a bond hearing is conducted by video, the hearing takes place at the Los Angeles Immigration Court, where the immigration judge, the DHS attorney, and (if represented) the detainee's attorney are physically present. The detainee appears by video from the detention center and is not transported to Los Angeles. In general, based on my experience and observations, bond hearings conducted by video do not materially differ in length from bond hearings in which the detainee is physically present.

11. Based on my experiences working with detained and released immigrants, immigrants released from detention are better able to obtain legal representation. In addition, immigrants released from detention are better able to assist with preparing applications for relief, defenses to removal, and, in general, gathering evidence and witnesses. For non-detained clients, I do not have to travel long distances to meet with clients at detention centers, nor do I have to worry that my visits might be delayed or cut short by "counts", meal-times, or "lockdowns."

12. Detention also presents serious impediments to my ability to communicate with my clients and advocate on their behalf at immigration court hearings. For hearings in which the detainee is physically present, the detainee must be transported to the Los Angeles Immigration Court. Because the detention centers are located some distance from the Los Ange-

les Immigration Court, detainees with hearings on the morning calendars often are forced to wake up very early in the morning (as early as 3 AM) to be transported to Los Angeles. In my experience, my clients are often exhausted during their hearings due to the early wakeup and long transport to the Los Angeles Immigration Court. In the courtroom, the detainees are handcuffed and shackled at their ankles until an individual detainee's case is called, at which point an ICE official will uncuff the detainee and allow him or her to sit at the counsel table during their hearing. After the hearing is completed, the detainee is cuffed again. My clients often tell me that they find the shackles painful and humiliating.

13. For detained clients that appear by video, there are different challenges. First, it is very difficult to have confidential attorney-client communications during a hearing by video, whereas when the client is in court an attorney can lean over and discreetly speak with a client. Second, if documentary evidence is in the detainee's possession, the detainee must submit the documents through the court fax system. The same is true for documents in DHS' possession which need to be reviewed by the detainee. I have observed that this system does not always function well, particularly for lengthy documents.

14. Currently, my office has approximately 23 cases—both detained and non-detained—pending before various judges at the Los Angeles Immigration Court. In the months since the preliminary injunction order was issued in *Rodriguez*, I have not observed any noticeable increase in the time it takes for a matter to be scheduled for a bond or other types of

hearings, or in the length of continuances, for my cases at the Los Angeles Immigration Court.

15. In a *Casas/Diouf* or *Rodriguez* PI hearing, as well as bond hearings under Section 1226(a), I typically present substantial documentary and testimonial evidence relevant to whether my client is a danger or a flight risk. For example, such evidence may include testimony from family members and other members' of the community affected by my client's detention; documents regarding past employment, participation and completion of substance abuse programs, or attendance and involvement in religious activities; and documents regarding the client's applications for relief and case history. In my experience, it can take a substantial period of time (at minimum, several days) to research, gather, and prepare such evidence for a bond hearing. In my experience, such evidence can be critically important to establishing a client's fitness for release and to obtaining a reasonable bond amount.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed this 7th day of Feb., 2013 in Los Angeles, California.

/s/ STACY TOLCHIN
STACY TOLCHIN

Exhibit A

IMMIGRATION COURT
300 NO LOS ANGELES ST. RM 4330
LOS ANGELES, CA 90012

LAW OFFICES OF STACY TOLCHIN
STACY TOLCHIN, ESQ.
634 S. SPRING ST., SUITE 714
LOS ANGELES, CA 90014

FILE: A090-083-757

RE: LOPEZ CASTENEDA, GILBERTO

NOTICE OF CUSTODY REDETERMINATION HEARING IN IMMIGRATION PROCEEDINGS

PLEASE TAKE NOTE THAT THE ABOVE CAPTIONED CASE HAS BEEN SCHEDULED/ RESCHEDULED FOR A CUSTODY REDERTERMINATION HEARING BEFORE THE IMMIGRATION COURT ON Nov 8, 2012 AT 08:00 A.M. AT THE FOLLOWING ADDRESS

300 NO LOS ANGELES ST. RM 8549
LOS ANGELES, CA 90012

YOU MAY BE REPRESENTED IN THIS PROCEEDING, AT NO EXPENSE TO THE GOVERNMENT, BY AN ATTORNEY OR OTHER INDIVIDUAL AUTHORIZED AND QUALIFIED TO REPRESENT PERSONS BEFORE AN IMMIGRATION COURT. IF YOU WISH TO BE REPRESENTED, YOUR ATTORNEY OR REPRESENTATIVE SHOULD APPEAR WITH YOU AT THE HEARING.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
606 SOUTH OLIVE ST.
LOS ANGELES, CA 90014

LAW OFFICES OF STACY TOLCHIN
STACY TOLCHIN, ESQ.
634 S. SPRING ST., SUITE 714
LOS ANGELES, CA 90014

IN THE MATTER OF VAN BREUKELEN, JOHANNES

FILE A 011-482-946 DATE: Oct 29, 2012

___ UNABLE TO FORWARD – NO ADDRESS PROVIDED

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530

FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECSION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
606 SOUTH OLIVE ST.
LOS ANGELES, CA 90014

✓ OTHER: SEE ATTACHED COPY OF "ORDER FOR HEARING" OF THE IMMIGRATOIN JUDGE.

[ILLEGIBLE]
COURT CLERK
IMMIGRATION COURT

CC: NGUYEN, TRACY, ESQ.
606 S. OLIVE ST., 8th FLOOR
LOS ANGELES, CA, 90014

Deposition of Wesley J. Lee (excerpts)

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MR. ATKINSON: Object to the form of the question.

THE WITNESS: It could be. It could be considered.

BY MR. ARULANANTHAM:

Q. Is it something that's considered regularly?

MR. ATKINSON: Object to the form.

THE WITNESS: I would say that most asylum cases that we release on parole are done without any kind of alternative detention.

MR. ATKINSON: And I just want to make it clear on the record that Mr. Saldana has also been designated for discussion of the topic of alternatives to detention. So—

BY MR. ARULANANTHAM:

Q. I'm going to show you what we'll mark as Exhibit No.—what number are we?

MR. ATKINSON: Six, I believe.

MR. ARULANANTHAM: Six. (Exhibit 6 was marked for identification.)

BY MR. ARULANANTHAM:

Q. If you look at page—the third page of this—well, sorry. Tell me what this document is.

A. It's a policy on parole of aliens—of arriving aliens found to have a credible fear of [115] persecution or torture.

Q. This is one of the documents that you reviewed prior to this deposition; right?

A. I definitely read this document.

Q. I mean to get ready for this deposition, is this one of the documents you reviewed?

A. I haven't reviewed this in a while.

Q. On Page 3, which is also labeled ICE23 at the bottom, at the bottom paragraph, 6.3 it's numbered, it says, "DRO shall maintain national and local statistics on parole determinations and have a quality assurance process in place to monitor parole decision-making." Do you know if those statistics are kept?

A. Yes, they are kept.

Q. What are those statistics on?

A. I'm not sure what you're saying.

Q. What are they measuring? What are they keeping track of?

MR. ATKINSON: Object to form.

THE WITNESS: I'm not really sure what headquarters is tracking for, but the field offices are required to forward them to headquarters .

BY MR. ARULANANTHAM:

Q. What are you forwarding to them?

* * * * *

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Q. Is the flight risk standard that you apply in parole decisions different than the flight risk standard that you apply with respect to other custody determination processes?

MR. ATKINSON: Object to the form.

You can answer.

THE WITNESS: Only on the parole? I would say yes.

BY MR. ARULANANTHAM:

Q. How is it different?

A. Our parole policy is very liberal now. So if—pretty much if the—after a determination of credible fear they can provide a sponsor, an address to go to, that's going to satisfy the flight risk.

Q. Whereas more would be required for 236(a) determination?

A. It would.

Q. Is the danger standard that you apply in parole cases different than the danger standard that you apply in other cases, in other custody determination processes?

MR. ATKINSON: Object to the form. You can answer.

THE WITNESS: I would say it is just because

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MR. ATKINSON: Object to the form.

You can answer.

THE WITNESS: Deportation officer, in my opinion, would be a reviewer and a recommender.

BY MR. ARULANANTHAM:

Q. I meant the supervisory review, the levels above that.

MR. ATKINSON: Object to the form.

THE WITNESS: They could.

BY MR. ARULANANTHAM:

Q. Does it happen?

MR. ATKINSON: Object to the form.

THE WITNESS: I don't know. I don't know if every reviewer has not interviewed somebody.

BY MR. ARULANANTHAM:

Q. Is it the practice of the ICE agents who are doing the reviews, not the initial—the initial recommender but the reviewer—is it the practice of them to interview the detainees?

A. It's not practice.

Q. Have you ever seen it?

A. Some of the supervisors might have interviewed the detainee. I couldn't tell you really.

Q. So the—staying on the policy for a minute, let's look at Exhibit 6, Page ICE23, Paragraph 6.2.

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Looking at the line it says—starts in the second line: When an arriving alien found to have a credible fear establishes to the satisfaction of DRO his or her identity and that he or she presents neither a flight risk or danger to the community, DRO should, absent additional factors described in Paragraph 8.3 parole the alien.

A. Yes.

Q. What is your understanding of the phrase "to the satisfaction of"? Is that a like legal standard? Or what does that phrase mean to you?

MR. ATKINSON: Object to the form.

THE WITNESS: What does the phrase mean to me? It means that if they can show their identity and it's reasonable and they have a sponsor that make them not a flight risk, they have no criminal history that we know of to make them ineligible for release or danger to the community, they would be released.

BY MR. ARULANANTHAM:

Q. Is it—go back a second. Have you been—have you been trained at any point on the difference between preponderance of the evidence or clear and convincing evidence or burdens of proof? Is that something that ever came up in your training on custody determinations at any point?

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A. On custody determinations I would say no.

Q. Did it come up in any training?

A. In just law, immigration law? Sure.

Q. Do you understand "to the satisfaction of" to be like a standard like that or no?

MR. ATKINSON: Object to the form.

THE WITNESS: This parole policy is very liberal to the arriving alien.

BY MR. ARULANANTHAM:

Q. Right, you said that.

A. So it is—if they can show that they're not lying —if we can't demonstrate why we think they're lying or if they have a sponsor where they're going to go when they're going to be released so they don't become a flight risk, if we don't have any information on their criminal history, they are going to be released. Very liberal policy.

Q. Are there databases that ICE uses at the field office level to record statistics on parole?

MR. ATKINSON: Object to the form of the question, outside the scope of the 30(b)(6) topics.

You can answer.

THE WITNESS: We do have a database, ICE does, and information is put in that database. I do not think there is any way to pull a statistic out of

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that database. That's why we send the forms up to headquarters.

BY MR. ARULANANTHAM:

Q. Do you know the name of that database?

A. The ENFORCE System. Then there's a couple modules off of that. It's EARM and the detention module. But it's basically ENFORCE.

Q. Then those statistics you're referring to are not limited to parole decisions, it's other statistics also that are in those databases?

MR. ATKINSON: Object to the form of the question and object to the question to the extent it exceeds the topics of 30(b)(6) deposition.

You can answer.

THE WITNESS: Information on an alien that's going through proceedings—information on that case is going to be in that system.

MR. ARULANANTHAM: Let me take one second.

Q. What statistics about parole decisions get entered that database?

MR. ATKINSON: Object to the form of the question. Outside the scope of the 30(b)(6) deposition.

You can answer.

THE WITNESS: You mean what decision?

Parties' Stipulation as to Cost Discovery (excerpts)

One of the disputes that the parties have resolved is a dispute over certain several requests regarding the costs of detention and the costs of providing bond hearings. Petitioners sought that information on the ground that the "costs" may be relevant to the due process analysis established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which Petitioners contend may apply to this case. In *Mathews*, the Supreme Court set forth a balancing test for determining, in a case raising procedural due process challenges to administrative procedures, what administrative procedures are required when there has been a deprivation of liberty and due process is required. Under the *Mathews* due process analysis, the Court considers, among other things, the Government's interest, including "the fiscal . . . burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

Petitioners propounded requests for documents and interrogatories identifying detailed breakdowns of the costs of detaining aliens under the challenged immigration detention statutes and detailed breakdowns of the costs of providing bond hearings and other proceedings before immigration judges. Respondents objected that such cost discovery was irrelevant in light of the fact that the Government did not intend to raise the fiscal burdens as a defense to this action. During the parties' negotiations, Petitioners agree not to compel responses to the requests pertaining to "costs" if Respondents agreed not to purse a general defense at any stage of this litigation, including on appeal, as to the "fiscal burdens" of providing bond hearings.

To that end, the parties stipulate as follows:

1. Respondents represent and the parties stipulate that, except as described in paragraphs 3 and 4, they will not argue or otherwise pursue a general defense in this litigation on the grounds that (1) that the cost of providing a bond hearing should be considered in this case as a factor weighing in favor of Respondents, or (2) that the cost of providing bond hearings to class members (were Petitioners granted the relief they seek) would be greater that the cost of detaining class members. This stipulation * * *